BUSINESS, INNOVATION AND SKILLS

UNITED NATIONS FIREARMS PROTOCOL (31703) 10963/10

Letter from the Chair to Mark Prisk

We read with interest your Explanatory Memorandum of 6 July on the proposal to give effect to Article 10 of this Protocol within the EU. In particular, we noted that there will be extensive consultation within Whitehall and with industry in order to enable the Government to make a proper assessment of the legal, policy and practical considerations which arise.

It seems to us that, if we in turn are to take an informed view of the legal and political importance of the document, it would be sensible to await that assessment, and we will therefore hold the document under scrutiny pending receipt of this further information.
8 September 2010

DOC 12217/08: PROPOSAL FOR A DIRECTIVE AMENDING DIRECTIVE 2006/116/EC ON THE TERM OF PROTECTION OF COPYRIGHT AND CERTAIN RELATED RIGHTS

Letter from Baroness Wilcox to the Chair

I am writing to give you advance warning of the possibility that the Government may need to override parliamentary scrutiny on a proposal for a Directive amending the term of protection of copyright for sound recordings and performers' rights in sound recordings.

Discussions within the Council on a proposal for an extension of copyright term for sound recordings have been ongoing since mid-200S. After several rounds of negotiations considerable support emerged for a European Parliament (EP) proposal for an extension from 50 to 70 years together with a package of measures that would see permanent benefits to performers. The UK sees this as an acceptable compromise and is in favour of the proposal.

The current Presidency, Spain, are keen to push through a vote in Council before the end of their term of office and now believe that the blocking minority may have fallen. The EP proposal is likely to be added to the agenda of the next Coreper meeting on 23rd June. If the proposal is agreed it will go to Council as an A Point; this is likely to be on 2Sth or 29t June, but could come as early as the 24th. A vote will be finely balanced and UK support is critical to the Directive passing. The current Presidency are believed to be more supportive of the proposal than their successors, so there is effectively only a few days left to agree this compromise.

The last Government provided evidence for scrutiny of the proposal in both Houses before Parliament dissolved in April 2010. The House of Lords cleared the proposal from scrutiny on 3 March 2010; the Commons requested that the government up date them with an EU voting timetable - Parliament was dissolved before this was known.

The UK has pledged its support for this extension of copyright term and the new UK Government has confirmed its support for the EP proposal. A change in our position at this stage might jeopardise the Directive and risk our relationships with the music industry and with some Member States.

We shall of course respond urgently to any request from you for further information such that your Committee may clear the document as soon as possible. In the meantime I hope that you will accept my explanation.
21 June 2010

DOC 12217/08: PROPOSAL FOR A DIRECTIVE AMENDING DIRECTIVE 2006/116/EC ON THE TERM OF PROTECTION OF COPYRIGHT AND CERTAIN RELATED RIGHTS

Letter from Baroness Wilcox to the Chair

In my letter of 21 June, I indicated to the Committee a potential scrutiny override. I am glad to write to inform you that we did not need to invoke the scrutiny override under the recent Spanish Presidency, as the above proposal did not proceed to a vote in Council due to the failure of a Qualified Majority to form. However, in preparation for any future vote, I have also written to my Cabinet colleagues (European Affairs Committee), who have confirmed a supportive position for the proposal.

The last Government provided evidence for scrutiny of the proposal before Parliament in January 2010. The House of Commons requested that the Government update them with an EU voting timetable (letter dated 9 February) however; Parliament was dissolved before this was known.
Under the current Belgian presidency, a Qualified Majority could still form. If this occurs, we may be called to vote in Council at short notice and possibly during Parliamentary recess. On this basis, I would be grateful if the Committee could consider lifting the scrutiny reserve on the above at its earliest opportunity. We shall of course respond urgently to any request from you for further information, such that your Committee may clear the document.
7 July 2010

Letter from the Chair to Baroness Wilcox

Thank you for your letters of 21 June and 7 July. It seems that since June last year a blocking minority on this proposal has persisted.

The Committee has considered your invitation to lift the scrutiny reserve on this proposal but has decided not to do so. There is always the risk of a vote in the Council on a European document taking place during recess, so that alone cannot be sufficient reason to lift scrutiny. But also there may be further compromises made in order to secure a qualified majority in the Council. If so, we would want to consider them before lifting scrutiny, at any stage in the Parliamentary calendar. Should this happen, we trust that you will do your utmost to give us as much notice a possible.
8 September 2010

17333/08: PROPOSAL FOR A RECAST DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE RESTRICTION OF THE USE OF CERTAIN HAZARDOUS SUBSTANCES IN ELECTRICAL AND ELECTRONIC EQUIPMENT (ROHS)

Letter from Mark Prisk to the Chair

I refer to a supplementary EM on the above proposal which my predecessor submitted to Parliament on the 27 May 2009 where the European Scrutiny Committee cleared it from scrutiny (Report No 29) on 14 October 2009.
The purpose of this letter is to warn you that there are strong indications that the Belgian Presidency will work with the European Parliament and the Commission to achieve a first reading agreement late in 2010. At this stage, meetings have taken place between the parties at official level to try and establish whether such an agreement is likely. These so called "technical" meetings will continue into September and if successful will lead to the start of political negotiations late in September. Although a first reading vote in Plenary was

scheduled for mid October, we now believe that date is likely to slip to the end of the year.

If we do indeed progress to formal first reading negotiations, I will update you in the autumn.
20 July 2010

Letter from the Chair to Mark Prisk

Thank you for your letter of 20 July, drawing our attention to the likelihood of the Belgian Presidency working with the European Parliament and Commission to reach a first reading agreement on this proposal towards the end of this year.

As you have noted, the previous Committee cleared this document in October 2009, and, whilst we were grateful for this update and for your offer to keep us posted of further developments, we not consider these need affect the clearance already given.
8 September 2010

DOC 8969/09: PROPOSAL FOR A RECAST DIRECTIVE ON COMBATING LATE PAYMENT IN COMMERCIAL TRANSACTIONS

Letter from Mark Prisk to the Chair

At its meeting on the 15 December 2009 the European Scrutiny Committee cleared this document from scrutiny. I am writing to provide an update on the position in Council and the European Parliament and also to inform you of the UK's ongoing strategy. Negotiations with Member States have continued and there is now the possibility of a first reading agreement under the Belgian Presidency.

The Commission's revised proposal for a Late Payments Directive was published in April 2009. Your Committee initially retained the Directive under scrutiny, whilst being supportive of the UK's overall position and approach.
Discussions within the Council on this Directive have continued and there is now the possibility of a first reading agreement under the Belgian Presidency. Negotiations in the working group have progressed well and the current draft text represents a package which will improve the situation for UK businesses trading in Member States, whilst avoiding undue additional burdens.

The key provisions of the current draft of the Directive are:
• a 30 day upper limit on payment periods for public authorities;
• freedom to negotiate payment periods and interest rates in contracts between undertakings;
• a fixed lump sum payment for recovery costs; and
• a fixed statutory interest rate for public authorities.
The current text meets the UK's key aims of speeding up public sector payments and providing suppliers with the certainty of an upper limit on payment periods from public authorities, whilst maintaining business-to-business contractual freedoms (which can be vital for new and growing businesses seeking new markets).
20 July 2010

Letter from the Chair to Mark Prisk

Thank you for your letter of 20 July, drawing our attention to the further discussions which have taken place, and to the possibility of a first reading agreement being reached under the Belgian Presidency.

As you have noted, the previous Committee cleared this document in December 2009, and we have noted that

the current text meets the UK's key aims of speeding up payments and providing suppliers with greater certainty, whilst maintaining business-to-business contractual freedoms. Consequently, whilst we were grateful for this update, we do not consider this need affect the clearance already given.
8 September 2010

RE: COUNCIL DOC. NOS. 9896/10 AND 9900/10: AGREEMENT WITH EEA AND EFTA COUNTRIES ON A FINANCIAL MECHANISM AND ADDITIONAL PROTOCOLS CONCERNINGSPECIAL PROVISIONS APPLICABLE TO IMPORT INTO THE EU OF CERTAIN FISH AND FISHERIES PRODUCTS 2009-2014

Letter from Edward Davey to the Chair

I am writing to inform you of recent policy developments concerning the above Explanatory Memorandum submitted jointly for scrutiny on 15 June. Your Committee has yet to consider.

The Explanatory Memorandum covered two related documents regarding renewed agreements between the EU and Iceland, Liechtenstein and Norway, and the EU and Norway, on financial mechanisms and additional protocols to the Agreements between the EU and Iceland and Norway concerning special provisions applicable to import into the EU of certain fish and fisheries products for the period 2009-2014.

On 26 July the General Affairs Council adopted a decision on the signing and provisional application of agreements with Iceland, Liechtenstein and Norway establishing a new mechanism for financial contributions from the three partner countries and a new Norwegian financial mechanism for the period 2009-2014.

The agreement includes a modification to the legal basis on which the financial mechanism is based so that Article 217 is now used rather than Article 207 as previously. This ensures that no precedent is set for future cohesion policy.

The agreement had passed to Coreper on 20 July where the UK abstained on voting given that the proposals remained subject to a scrutiny reserve in the House. The Financial Mechanism and the Fish Protocols had been agreed at a meeting of the Working Party on European Free Trade Association (EFTA) on 15 July. As the EM had not cleared from scrutiny, the UK entered a parliamentary reservation to indicate that the UK was abstaining on the Decision as our Parliamentary Scrutiny Committees were not yet in a position to fully consider the proposal. The UK government however agreed with the principle and substance of the proposal.
6 August 2010

Letter from the Chair to Edward Davey

Thank you for your letter of 6 August, drawing to our attention the fact that the UK intended to abstain on these two documents when they came before the General Affairs Council on 26 July, and that the legal base had been changed from Article 207 to Article 217TFEU.

We were grateful for this information, and cleared the documents in question at our meeting today.
8 September 2010

7424110 ON "PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING COUNCIL DIRECTIVE 7816601EEC ON THE ANNUAL ACCOUNTS OF CERTAIN TYPES OF COMPANIES AS REGARDS MICRO-ENTITIES - OUTCOME OF THE EUROPEAN PARLIAMENT'S FIRST READING (STRASBOURG, 8 TO 11 MARCH 2010)"

Letter from Edward Davey to the Chair

I refer to the European Parliament's first reading of Council Document 7229109 relating to the accounts of the smallest companies, so-called "Micro- entities".

An Explanatory Memorandum (EM) on this subject was submitted on 17 March 2009, and was cleared by the scrutiny committees of both Houses. The proposed Directive amends the 4th Company Law Directive, which establishes minimum requirements for the annual accounts of companies and certain partnerships, and forms the basis for financial reporting by small and medium enterprises (SMEs) in the EU. Micro-entities are mostly subject to the same reporting rules as larger companies. Those rules put a burden on them which is disproportionate. This proposal allows Member States the option to give micro-entities flexibility in how they draw up annual accounts and would allow the UK to harmonise tax and accounting rules for these companies. 7424110 on "Proposal for a Directive of the European Parliament and of the Council amending Council Directive 7816601EEC on the annual accounts of certain types of companies as regards micro-entities - Outcome of the European Parliament's first reading (Strasbourg, 8 to 11 March 2010)".

1. A recital now contains a reference stating that micro-entities must still keep records showing the company's business transactions and its financial situation.
2. A recital now states that Member States should take into account the differing impact of the threshold values set in this Directive, particularly as the number of businesses this applies to will vary greatly from one Member State on another, and given that the activities of micro-entities have no bearing on cross border trade or the functioning of the internal market.
3. A recital states that Member States should take into account the needs of their own market when implementing Directive 78/660/EEC, particularly ensuring transparency also for micro-entities so they are open and have access to the financial markets.
4. An amendment which changes Article 1a, paragraph 1 requiring microentities to keep records showing their business transactions and financial situation.
5. An amendment which changes Article 2, paragraph 1 to take account in particular of the situation at national level regarding the number of businesses covered under the threshold values laid down in that Article.

The proposal was approved by the European Parliament in February 2010, but continues to be blocked by a minority of Member States in the Council. We continue to work closely with the Commission and Member States to try to resolve this issue.
11 August 2010

Letter from the Chair to Edward Davey

Thank you for your letter of 11 August, drawing to our attention a number of amendments adopted by the European Parliament at its First Reading, and to the fact that a minority of Member States are blocking progress in the Council.

Whilst we were grateful for this information, we do not think its affects the clearance given in March 2009, or that it needs to be reported to the House.
8 September 2010

RE: EM 8321/10 COUNCIL CONCLUSIONS ON THE STRATEGIC REPORT OF 2010 BY THE COMMISSION ON THE IMPLEMENTATION OF THE COHESION POLICY PROGRAMMES

Letter from Mark Prisk to the Chair

I would like to update you on recent policy developments relating to the above Commission document for which an Explanatory Memorandum was submitted for scrutiny on 26 May. The EM has yet to be considered by your Committee.

The Council conclusions on the above document were discussed at the General Affairs Council which was

held on 14 June 2010. The Foreign Secretary represented the UK at the meeting. The Council conclusions focus on Cohesion Policy and are very much broader and separate from the Strategic Report itself which provides a summary of the progress being made across the 27 Member States in implementing current Cohesion policy programmes. Given that the Government's position on the future of the Structural and Cohesion Funds is still to be determined, the line that UK officials took in discussions on the conclusions was that we could not agree to text that would pre-judge the negotiations on the next financial perspective. The final conclusions include this important qualifier. I am enclosing the relevant text of the Council Conclusions for your information.

The conclusions invite the Commission to explore possibilities for a better coordinated and simplified policy and note that Cohesion Policy will need to support the Europe 2020 strategy and should continue to foster competitiveness, innovation, employment and economic, social and territorial cohesion in the European Union.
3 August 2010

Letter from the Chair to Mark Prisk

Thank you for your letter of 3 August providing a copy of the Council Conclusions on the Commission‘s 2010 Strategic Report, which were agreed at the General Affairs Council on 14 June, and drawing our attention to the inclusion of language stating that the Conclusions are ―without prejudice to the future financial framework‖.

The Committee considered the Commission‘s Strategic Report on the implementation of cohesion policy programmes at its meeting on 8 September and cleared the document from scrutiny.
8 September 2010

14183/08 PROPOSAL FOR A EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE ON CONSUMER RIGHTS.

Letter from Edward Davey to the Chair

As Minister for Consumer Affairs I am writing to inform you of progress in the negotiation of the proposed Consumer Rights Directive which you have retained under scrutiny. The Government is supportive of this Directive and its aims of improving the functioning of the business-to-consumer Internal Market whilst providing a high level of consumer protection.

We support full harmonisation where there is evidence that divergent rules are shown to be creating barriers to cross-border trade, or unacceptable confusion or complexity for consumers and/or business. Our aim is to secure fully harmonised solutions to achieve our objectives, where this is not possible we would seek amendments which would allow the UK to retain a higher level of consumer protection in certain areas. In particular, we are continuing to seek amendments to the Directive to provide an EU wide 'right to reject' and longer liability periods which provide a level of consumer protection equivalent to that currently enjoyed by UK consumers. We are clear that the Directive cannot lead to a loss of these key consumer rights.

Vivianne Reding the new Commissioner for Justice, Freedom and Security, has responsibility for the Directive in the Commission. She has made it clear that she sees legislative agreement on this Directive as a priority, ideally by the end of 2010, and that she would be happy to allow Member States to maintain or adopt divergent provisions in a limited number of areas in order to secure agreement.

In light of these developments, the Competitiveness Council meeting of 25 May included a policy debate on the Directive. It is clear that the majority of Member States are supportive of the proposal for a new Directive and are keen to make progress. There was a general consensus amongst Member States that the Directive should include a mix of full and minimum harmonisation provisions to allow member states to maintain or

adopt provisions which offer a higher level of consumer protection in certain areas. Negotiations will now be taken forward on that basis.

The first Council Working Group under the Belgian Presidency will be held at the end of July. I understand that the Belgians are keen to make substantive progress during their Presidency and there is likely to be another debate on the Directive at Competitiveness Council towards the end of 2010.

In the European Parliament the Internal Market and Consumer Protection Committee (IMCO) have been considering the proposal. The Rapporteur, Andreas Schwab (German, EPP) has published his proposed amendments to the Directive. I attach his report for your information. The Rapporteur has proposed a mixed harmonisation approach which provides Member States to retain existing consumer protections in certain areas. The Legal Affairs and Economic and Monetary Affairs Committees are expected to provide opinions on the proposal. The IMCO Committee is due to vote on amendments in December of this year and we expect the First Reading Plenary vote in Parliament to take place early next year. We are considering the changes proposed in the Rapporteur's report and will be engaging with key MEPs on this dossier.
I expect that negotiations will move forward considerably over the coming months and I will of course keep you updated as discussions progress.
25 July 2010

EXPLANATORY MEMORANDUM ON THE COMMUNICATION FROM THE EUROPEAN COMMISSION: The Future Competition Law Framework applicable to the motor vehicle sector + COMMISSION STAFF WORKING PAPER + IMPACT ASSESSMENT COM(2009) 388 final, 12571/09, ADD 2 12571/09 28 August 2009.

Letter from Edward Davey to the Chair

I am writing to update you following on from the above Explanatory Memorandum dated 28 August 2009 which was cleared from scrutiny by your Committee, to confirm that the revised EU Motor Vehicle Block Exemption Regulation ((EU) 461/2010) came into force on 1 June 2010.

The revised Motor Vehicle Block Exemption Regulation (MVBER) and accompanying guidelines apply to agreements between vehicle manufacturers and their authorised repairers and spare parts distributors for the repair and servicing of motor vehicles in the EU.

Following public consultation, the European Commission considered that a specific block exemption is no longer warranted in respect of the sale of new cars and commercial vehicles. The Commission has therefore provided for a three year transition period until 2013 during which the previous MVBER ((EC) 1400/2002) will continue to apply. After which the general block exemption on vertical distribution agreements (regulation (EU) 33012010 adopted on 20 April 2010) only will apply to the sale of new cars and commercial vehicles.

An overview of the regulatory framework applicable to the motor vehicle sector, including the text of the new MVBER, accompanying guidelines and frequently asked questions, can be found at the following link:

During the development of the new regulation, the UK (BIS and OFT) expressed support for a series of Frequently Asked Questions (FAQs) to accompany the new regulation to ensure that it would be more widely understood, particularly by consumers.
The revised MVBER has been introduced following a period of extensive consultation by the European Commission. Concerns over the right of access to information, particularly
technical information for the independent aftermarket, were foremost in discussions between the Commission and Member States as the new regulation was developed.
The UK motor vehicle sector has indicated that it is broadly content with the content of the new Regulation as it relates to repair and maintenance services by the independent sector.
31 July 2010

Letter from the Chair to Edward Davey

Thank you for your letter of 31 July, drawing to our attention the developments which have taken place since the previous Committee cleared this document in August 2009.

We were grateful for this update, and have noted the position.
15 September 2010

DRAFT DIRECTIVE ON CONSUMER RIGHTS (14183/08) (30036)

Letter from Edward Davey to the Chair

Thank you for your letter of 8 September requesting further information on the Government's approach on the Consumer Rights Directive in light of the changes proposed in the report of the Rapporteur of the European Parliament's Internal Market and Consumer Protection Committee (IMCO).

The Government's position remains unchanged from that set out in my letter of 25 July. We remain supportive of the Directive's dual aims of increasing cross-border trade through improving the functioning of the business-to-consumer Internal Market whilst also providing a high level of consumer protection. We will continue to push for full harmonisation where there is evidence that divergent rules are creating barriers to cross-border trade or complexity for consumers and/or business. We remain committed to the protection of key UK consumer protections.

The IMCO Rapporteur's Report proposes that the Directive be adopted as a mixed harmonisation measure containing both full and minimum harmonisation provisions. The Rapporteur of the Legal Affairs Committee (JURI) presented her Draft Opinion (attached) on the Consumer Rights Directive proposal. The Draft Opinion proposes an almost exclusively minimum harmonisation approach. JURI will work as an Associated Committee to the IMCO Committee and jointly agree a timetable and texts for amendments. I and my officials are engaging with MEPs on both IMCO and JURI Committees.

A mixed harmonisation approach has also been agreed in Council and negotiations are continuing on that basis, although, as in the European Parliament, agreement has not yet been reached on which provisions of the Directive should be subject to full or minimum harmonisation. In my view it is likely to be necessary to adopt a minimum harmonisation approach in a small number of areas in order to secure existing national consumer protections or to provide national Governments with the flexibility to apply additional protections to address consumer detriment in particular market sectors in the future.

Negotiations in Council Working Group are making good progress under the Belgian presidency. I understand that the Presidency hopes to agree a general approach on the Directive at the Competitiveness Council meeting in December.

The European Parliament is unlikely to hold a First Reading Plenary Vote until early 2011.

I will keep the Committee updated as negotiations progress.
4 October 2010

Letter from the Chair to Edward Davey

Thank you for your letter of 4 October.

We note that the minimum harmonisation approach advocated in the report produced for the European

Parliament's Legal Affairs Committee (JURI) is somewhat at odds with the mixed harmonisation approach favoured by the Council and by the European Parliament's Internal Market and Consumer Protection Committee.

We understand the difficulty of determining which provisions of the Directive should be subject to full harmonisation (establishing uniform laws in all Member States) and which should be subject to minimum harmonisation (enabling Member States to exceed the minimum standards specified in the Directive), but your letter indicates that there is some prospect of agreement on a ―common approach‖ at the Competitiveness Council in December. We should therefore be grateful for a further progress report in good time before that Council so that we can consider the content of any proposed common approach.

Meanwhile, the draft Directive remains under scrutiny.
13 October 2010

14183/08 and 16933/10: Consumer Rights Directive

Letter from Edward Davey to the Chair

Thank you for your letter of 9 March. I am writing to update you on progress in the negotiation of the Consumer Rights Directive.

On 24 March the European Parliament held a plenary vote on amendments to the Commission's proposal. The European Parliament voted to accept 214 amendments. The file has now been sent back to the IMCO Committee and the Rapporteur, Andreas Schwab (German, EPP), has been granted a mandate to negotiate with the Council on the basis of these amendments.

Unlike the Council General Approach, which deletes the chapters providing pre-contractual information requirements for on-premises contracts, rules on sale of goods and unfair contracts terms provisions, the European Parliament has voted to retain all chapters of the original proposal. The vast majority of the provisions in the Council text are full harmonisation measures. It was possible to reach agreement on this basis in Council because of the more limited scope of the Council text. The European Parliament's text contains a mix of full and minimum harmonisation measures.

In my letter of 1 March I set out a number of concerns about some of the amendments proposed by the IMCO and JURI Committees. Although I believe that the plenary text is an improvement on the Committee text I remain concerned that a number of the amendments would be detrimental to the interests of UK business and consumers for the reasons outlined in my previous letter. I will strongly oppose including these amendments in the final text

I remain supportive of the deletion of the chapters on general information requirements, sale of goods and unfair contract terms but it is likely that compromises in some of these areas may be required in order to reach agreement with the European Parliament. It is possible that, in return for deletion of chapter 5 on unfair contract terms (inclusion of which is strongly opposed by the majority of Member States) the European Parliament will insist on inclusion of limited information
requirements for on-premises contracts and a reduced chapter 4 ("other consumer rights") covering aspects such as delivery and passing of risk, but not including the more difficult areas of conformity of goods and consumer remedies for nonconformity. I will carefully consider proposals in these areas as negotiations develop and remain committed to opposing any measures which would reduce key UK consumer protections or place undue burdens on UK businesses.

The trialogue meetings commenced in April and are continuing throughout May. Unless rapid progress is made in negotiations in the next couple of weeks it is unlikely that we will be asked to take decisions on the Directive at the next Competitiveness Council on 30 May.

I will update you on progress in due course and will of course seek your agreement when Council is asked to agree a position on the Directive.
12 May 2011

Letter from the Chair to Edward Davey

Thank you for your letter of 12 May informing us of the latest developments concerning the draft Consumer Rights Directive, following the European Parliament's plenary vote on 24 March.

We are grateful for this update and welcome your undertaking to provide further progress reports.
18 May 2011

11805/10: Proposal for a Council Regulation on the translation arrangements for the European Union patent

Letter from Baroness Wilcox to the Chair

I would like to update you on recent developments regarding the issue of EU patent languages, including the outcome of the EU Competitiveness Council on 11 October which I attended, and at which EU patent languages was discussed.

Since the Commission's proposal was published in July, a number of Member States, whilst supporting the general principle of a three language regime, have raised concerns over some of the details, particularly the availability of machine translations of patent applications for information purposes. These concerns were addressed in the Presidency's paper (Council doc. no. 14377/10), and a political orientation was sought on the basis of the Commission's proposal, with the amendments suggested by the Presidency's paper, at the Competitiveness Council on 11 October.

Although a large majority of delegations at the Competitiveness Council (including the UK) supported the Commission's proposal, with Presidency amendments, a political orientation was not achieved, with Spain and Italy indicating that they would block any agreement on this basis. A large majority of delegations also underlined that any further compromise to reach agreement must not result in significant costs for additional translations, and must not result in any legal uncertainty. The UK Government supports this view. We do however very much appreciate you agreeing to me voting in favour of a general approach on this proposal, even though this was ultimately not on the cards.

The prospect for further progress on this issue is currently unclear. The Presidency feels that it has enough support to intensify and accelerate work with a view to reaching a successful outcome by the end of this year. At the Competitiveness Council several delegations mentioned the possibility of using enhanced cooperation, and this is still a very real option, although the Presidency remains committed to finding a compromise acceptable to all 27 Member States. The UK Government is still considering its position on the use of enhanced cooperation for this issue. The Presidency is planning to hold an additional Competitiveness Council on 10 November to discuss the EU patent further, and we will of course keep you updated on any progress made.

Your comments regarding the Government's impact assessment are noted. However, as the prospect of agreement on the basis of the Commission's current proposal is still very uncertain, it is considered that completion of the impact assessment would be of little value at this stage. Should a proposal emerge that has a real prospect of success, under enhanced cooperation or otherwise, the Government will of course ensure that a suitable impact assessment is available.
16 October 2010

Letter from the Chair to Baroness Wilcox

Thank you for your letter of 16 October and the useful update on the negotiations it contained.

We would be grateful to be kept informed of any further progress in the negotiations, and also of the Government's views on enhanced cooperation as they develop.
10 November 2010

15289/09: TRANSFORMING THE DIGITAL DIVIDEND INTO SOCIAL BENEFITS AND ECONOMIC GROWTH

Letter from Ed Vaizey to the Chair

I refer to earlier correspondence from the previous administration's Minister for Communications with regard to the uses of the 800MHz band and in particular my predecessor's letter of 9th December 2009. My predecessor undertook to keep the Committee informed and I am more than happy to carry this process on.

As expected the Council conclusions did not make any reference to mandatory harmonisation but since then the Commission has issued a decision on the 800MHz band that includes technical harmonisation conditions. The decision is labelled as "Commission Decision of 6 May 2010 on harmonised technical conditions of use in the 790-862 MHz frequency band for terrestrial systems capable of providing electronic communications services in the European Union" (numbered 2010/267/EU).

The decision allows members states to continue to use the 800MHz band for its current use, television broadcasting, but says that if member states wish to allow another use they should do so under harmonised technical conditions. This is fully compatible with the UK's plans to release this band, most likely for mobile broadband services, as many other EU Member States plan to do; to deliver the benefits of the economies of scale that wider rollout will offer to EU consumers.

We are expecting further proposals from the EU in the Commissions forthcoming Radio Spectrum Policy programme (RSPP), a five year legislative programme. This programme has not yet been detailed but is likely to be adopted by the Commission before the end of the summer and will then be subject to debate in Council and in the European Parliament. I think it likely that it will seek to establish a time frame for the sole use of the 790-862MHz band for mobile purposes. As proposals become clear I will of course keep the Committee informed in the normal way.
13 October 2010

10963/10: PROPOSED REGULATION IMPLEMENTING ARTICLE 10 OF THE UN FIREARMS PROTOCOL

Letter from Mark Prisk to the Chair

Thank you for your letter of 8 September about the outcome of the consideration given to Explanatory Memorandum *10963/10* by the European Scrutiny Committee of the House of Commons.

I wanted to briefly update your Committee on the latest state of play. With regard to the Government's consideration of the proposed Regulation, an initial assessment has been made that has been supplemented with views from The Gun Trade Association who hold the main industrial interest in the UK. I judge however that it is still not possible at this stage to provide you with a proper assessment of the Regulation (including the UK-specific Impact Assessment) until details of the Regulation have been properly explained to Member States by the Commission. These discussions have only just commenced in the Working Party on Customs Union (Customs Legislation and Policy), including an Article-by-Article run through of the Regulation. There was a discussion on 21 October, and the item will be included on future meeting agendas until discussion is completed. I am afraid it is not possible to predict how long these discussions will take. When sufficient progress has been made in these working group meetings I will be in a better position to make a proper interpretation of the policy underpinning the Regulation together with any financial implications. At that stage, we can fulfil our commitment to you to provide you with an accurate assessment on which you can then make your judgement of the proposed Regulation.

Letter from the Chair to Mark Prisk

Thank you for your letter of 28 October letting us know that it is not possible at this stage to make a proper assessment of the implications of this proposal, and that you will do so once sufficient progress has been made in discussions in the working group.

So long as we are given adequate time to consider the document before any decision is taken on it, we are content to leave to you when you provide this information. In the meantime, we will of course continue to hold the document under scrutiny.
3 November 2010

EM 9424/10 COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND COUNCIL- ITER STATUS AND POSSIBLE WAY FORWARD

Letter from David Willets to the Chair

Thank you for your request for further information following the submission of my Explanatory Memorandum of 7 June 2010 and my letter of 4 August 2010. I am grateful to learn that the Communication from the Commission to the European Parliament and Council has cleared scrutiny and I am pleased to provide you with additional information.

With reference to the comment on the ITER cost over-run, the Government, in common with other European Member States, has been concerned about the large increase in the European contribution to the cost of ITER construction. Council Conclusions of 12 July recognised that the governance of ITER has to be improved and that there is a need for strict cost containment on the project.

As you recognised in your report, Council also proposed that the European contribution to ITER should be limited to €6.6 billion in 2008 prices in the period of construction 2007-2020. The latest estimate of the construction costs was however, €7.2 billion in 2008 prices. The European Domestic Agency, "Fusion for Energy", has now been requested to present a plan to Council on how the proposed savings in the budget will be achieved. Fusion for Energy will draw up a plan for cost containment, taking into account the necessary contingencies, and also make further savings wherever possible.

The European fusion research programme, of which ITER is of course a major part, is funded from the Euratom Framework Programme. After 2013, ITER will be funded from Framework Programme 8 which has yet to be negotiated and agreed by Member States.
28 October 2010

Letter from the Chair to David Willets

Thank you for your letter of 28 October.

Whilst we have noted the position as regards the source of future funding for this project, we had been under the impression from the material you sent us on 4 August that the plan being prepared by ―Fusion for Energy‖ to reduce the European contribution was to be presented to the Competitiveness Council on 26 November. We would be interested to know whether that is still the case; and, if not, what timetable is now envisaged.
3 November 2010

Commission Communication: European Broadband: investing in digitally driven growth

Letter from Ed Vaizey to the Chair

Thank you for sight of your recent reports (nos. 31969; 31965) covering the above Explanatory Memoranda and the requests for further information contained therein.

In order to assist in my response, I enclose the draft Council Conclusions on the European broadband strategy, that will be agreed by the Committee of Permanent Representatives (COREPER) following their meeting on Friday 24th November. Please note that these draft Conclusions were provided to us in strictest confidence by the Belgian Presidency, who have requested that we do not make them public in any way. With regards to the Conclusions, we do not anticipate any major changes to this draft at this meeting. These Conclusions will then be put to Ministers at the Telecoms Council on 3rd December that I am attending. I am therefore seeking your indulgence on lifting scrutiny on the Broadband Strategy allowing my agreement to the Council Conclusions at the Council on 3rd December.

The Radio Spectrum Policy Programme (RSPP)

In your report (31965), you requested further information on the content of Council Conclusions covering this aspect of the Broadband Package and how they will affect UK interests during future negotiations.

In my view the draft Council Conclusions are a set of high-level statements that set out a roadmap for the roll-out of broadband for Member States (with the RSPP playing a role in this activity).

You may wish to note that the draft Conclusions only specifically mention the RSPP in two instances and, in the main, they currently advocate policies that more or less align with those that HMG is undertaking to ensure the efficient use of spectrum in order to ensure the timely roll-out of mobile broadband. I am of the view that it is worth noting that both the roles of innovation and competition are recognised within the Conclusions.

As such, I conclude that the current draft text places no restrictions that would have a negative impact on the UK‘s future negotiations in this area and, indeed, bolster the UK‘s negotiating stance within the EU.

You may wish to note that it is now anticipated that the bulk of the negotiations will now take place under the auspices of the Hungarian and Polish Presidencies and my officials will keep you informed on a regular basis as the negotiations progress.

The Broadband Strategy and Council Conclusions

In your Report (31969) covering this particular document‘s EM, you enquire about the content of the Council Conclusions, as well as the enquiring specifically about whether the Conclusions contain caveats that preclude or pre-empt discussions covering the EU budget post-2012. I am pleased to report that the current draft does not precipitate these outcomes and thus the UK‘s position on future EU budget negotiations is not compromised.

That said, I am of the firm view that EU funding can play a pivotal role in assisting the roll-out of broadband in the UK. An excellent example of this is the broadband project in Cornwall that attracted EU funding. I am pleased that the draft Conclusions note actions that should increase the up-take of EU funding within the UK.

I hope that my response has fully answered those issues that you raise and I look forward to working with you closely to ensure that HMG‘s policy positions continue to reap benefits for the UK.
17 November 2010

Letter from the Chair to Ed Vaizey

On 16 November you submitted a Supplementary Explanatory Memorandum with an Initial Stage Impact Assessment.

You say that, as this is an initial proposal from the European Commission, some of the proposals are lacking in specifics, and that it has therefore been difficult to assess costs and benefits in detail. Looking at the IA, the

Committee would be bound to note that the IA contains virtually no useful information at all, since all the costs and benefits are described as ―Not Quantifiable‖.

However, the Committee notes that negotiations are about to begin in the relevant Council working party, about which you will be providing periodic updates. As those negotiations develop, and flesh begins to be put on the bones, a point will be reached when proposals have been developed to a degree whereby costs and benefits can be quantified. The Committee accordingly looks to you to provide a further, and fuller, IA then.
19 November 2010

9424/10 COM (10) 226: Commission staff working document Status of the ITER Project accompanying the communication from the Commission to the European Parliament and the Council: ITER status and possible way forward

Letter from David Willitts to the Chair

Further to my explanatory memorandum submitted in the House on 7 June, I am writing to you with an update on the draft Council Conclusions on ITER status and possible way forward.

As you may now be aware, Council Conclusions on ITER were adopted as a point at the Agriculture and Fish Council meeting on 12 July, and I attach these Conclusions for your information.

You will see from the Conclusions that Council reaffirmed its commitment to the successful completion of the ITER project and acknowledged its estimated financing needs. You will also note that Council recognised the governance of ITER has to be improved and that there is a need for strict cost containment on the project.

Council also agreed that additional commitments of up to €1.4 billion to be found for ITER for 2012-2013 should come from a mix of sources within the current EU budget. The Treasury was content with this outcome which avoids increasing the EU overall budget for 2007-2013.

The Commission argued for a long-term financial commitment from Member States to fund ITER for the duration of its construction, that is, to the end of the next EU budget period. However, the Government, like other Member States, considered that this would have prejudged the outcome of the negotiations on the next EU budget (2014-2020). The Council Conclusions make clear that within the European contribution to the construction costs of ITER, 80% will be funded by Euratom and 20% by France.

The Commission has recently responded to the Council Conclusions by adopting a proposal for funding the construction costs of ITER. The proposal, which is attached, proposes to cover the €1.4 billion needed for 2012-2013 through redeployment of €460 million from Framework Programme 7, by transferring €400 million of unused funds from other EU budgets, and by a further transfer within the EU budget to be specified later.

The European Parliament and the Council will now both have to agree on the proposal amending the current financial framework 2007-2013.

The Commission has indicated that it is now in a position to support ―ad referendum‖ (subject to later agreement of the budgetary authority) the adoption of the ITER baseline (the scope, schedule, and cost of the project) at the extraordinary ITER Council meeting on 27-28 July. As I am sure you are aware, Euratom is one of the seven signatories to the ITER Agreement, and the Commission represents Euratom at the ITER Council.
24 November 2010

Letter from the Chair to David Willitts

Thank you for your letter of 24 November.

We were grateful for this update, from which we were pleased to learn that ―Fusion for Energy‖ has come up with a plan to reduce the European contribution by €600 million, and that this was due to be presented to the Competitiveness Council on 26 November, as planned.
8 December 2010

13977/10: Commission‘s Communication _Towards a Single market act: For a highly competitive social market economy.

Letter from Edward Davey to the Chair

I am writing to ask you to consider issuing a scrutiny waiver for the Competitiveness Council Conclusions on the Single Market Act. As you will be aware, the Commission have launched a consultation on package of measures designed to improve the functioning of the single market. The Commission will consult on its communication, entitled Towards a Single Market Act: For a highly competitive social market economy, until 28th February 2011. The Commission intend to submit a final version of the Single Market Act to the Council in March 2011.

The Competitiveness Council plan to agree conclusions on the Single Market Act at its meeting on the 10th December 2010. These conclusions welcome the Commission‘s communication on the single market, endorse the political priority that has been given to the single market and the general approach of the draft Single Market Act and state that it is necessary to: fully exploit the untapped potential of the single market; use the single market to stimulate growth; and strengthen the external dimension of the single market.

I know that you are yet to clear the draft communication from scrutiny and I would be grateful if the Committee would consider granting a waiver in order for me to agree the conclusions. To aid your consideration, I attach the latest draft of the conclusions. The attached document is being provided to the Committee under the Government's authority and arrangements agreed between the Government and the Committee for the sharing of limite EU documents. It cannot be published, nor can it be reported on substantively in any way which would bring detail contained in the document into the public domain

I would welcome your response on whether you agree to grant a waiver in good time to inform my contribution to the debate on 10th December. I am of course happy to answer any further questions you may have regarding this.
2 December 2010

Letter from the Chair to Edward Davey

Thank you for your letter of 2 December, asking us to consider a scrutiny waiver for this Communication, which is due to be discussed at the Competitiveness Council on 10 December.

The Committee did in fact consider the document at its meeting today, and, whilst it clearly regarded it as of sufficient importance to warrant a substantive Report to the House, it took the view that most of the issues it raised were best considered as and when the Commission brings forward detailed proposals on the various aspects of the Communication. They have therefore cleared the document, and the question of a scrutiny reserve does not therefore arise. We were, however, grateful to you for bearing this point in mind.
8 December 2010

Letter from Edward Davey to the Chair

Since I wrote to you on 30 November substantial changes to the Consumer Rights Directive have been

proposed.

It is now proposed that the Directive should be limited to rules on distance and off-premises contracts, including rules on delivery and passing of risk for such contracts. The chapters on sale of goods and unfair contracts terms would be deleted and the existing Directives in these areas would remain in force. This approach has been discussed and approved by a qualified majority at COREPER. The Directive will also be discussed as an AOB item at Competitiveness Council on 10 December. Member States will then be asked to agree a General Approach on the Directive as an A item at Environment Council on 20 December.

The timetable in the European Parliament remains unchanged. The JURI and IMCO Committees intend to hold their Committee votes on amendments in the New Year and the First Reading Plenary Vote is scheduled for March. It seems likely that the Directive will go to Second Reading.

As I said in my previous letter, the UK Government will not agree the General Approach unless we are convinced that package of measures in the Directive will secure a high level of consumer protection for UK consumers, provides the necessary flexibility for the UK Government to adopt or maintain additional legislation in certain areas and does not place unreasonable burdens on UK business. Whilst it is disappointing that the scope of the Directive has been reduced in this way I believe that the UK should still support the Directive. Negotiations in Council have shown that reaching agreement on the deleted chapters would have been extremely difficult and there is a risk that consumer protections in the UK could have been reduced and/or unwarranted burdens on business could have been increased.

It is proposed that the provisions on distance and off-premises selling should in the main be fully harmonised. In a small number of areas Member States will be given the option of whether to maintain or introduce certain rules in national law. This approach will enable us to apply a monetary threshold for off- premises contracts. Whilst I would have preferred a fully harmonised threshold it is clear we will not be able to secure sufficient support in Council. I am therefore supportive of this approach.

The revised text provides greater clarity on the scope of the Directive and the relationship with national general contract law. It also clarifies the relationship with Union legislation and makes clear that the minimum harmonisation provision of the Services Directive will continue to allow Member States to impose additional information requirements beyond those required by the Consumer Rights Directive for services contracts on providers established in their territory. This is important as it will enable us to retain our existing information requirements for energy supply contracts and give us the flexibility to add to or amend these as necessary in the future.

The amendments we have supported to allow consumers to request performance of off-premises contracts during the withdrawal period without losing their right to withdraw, whilst ensuring that business receive payment for services provided are retained in the current text. The draft also continues to exempt a number of sectors from the scope of the Directive. I support these exemptions.

We have not been able to secure all the amendments we would have liked due to the conflicting views of other Member States. For example, the proposed definition of off-premises contract is broader than I would have liked. It will be extended to also cover situations where a consumer is personally and individually addressed away from business premises and then immediately concludes the contract at the trader‘s business premises or by means of distance communication. I am not convinced of the need for the additional protections provided by the off-premises rules in these circumstances. This approach would, for example, require traders to provide pre-contractual information and the right to withdraw in situations where a consumer has been approached in the street and informed of a special offer or sale in a particular store and then chooses to go to that shop and makes a purchase. Whilst I do not support this approach the detrimental impacts have been mitigated by limiting the scope only to situations where the consumer concludes the contract immediately after the approach from the trader and therefore will not apply to situations where the consumer has had the opportunity to consider whether or not to make a purchase. I am therefore content to agree this approach.

It is also the case that this is only the first step in the legislative process and I will need to analyse carefully the approach that the European Parliament takes early next year.

Overall, I am content that the revised proposal will provide additional protections for UK consumers and will not place unreasonable burdens on UK businesses.

I would welcome your response on whether you agree to grant a waiver in good time before the Council consideration of the Directive on 20 December.
13 December 2010

Letter from the Chair to Edward Davey

Thank you for your letters of 30 November and 9 December asking the Committee to consider a scrutiny waiver for this draft Directive so that the Government may agree a general approach at the 20 December Environment Council.

The Committee considered the latest Presidency compromise text (dated 10 December), which we believe will be the basis for the general approach, at its meeting today. The Committee shared your disappointment at the significant reduction in the proposed scope of the Directive. We noted your assurance that the Government would not agree a general approach unless it was convinced that the text proposed for agreement would secure a high level of protection for UK consumers without imposing unreasonable burdens on UK business.

While we accept that, after two years of negotiation, reaching agreement on the Commission's original proposal would appear to present formidable difficulties, not least because of Member States differing views on what should constitute core consumer protection standards, we nevertheless consider it deeply regrettable that such significant changes to the Directive have been proposed at such a late stage in the Belgian Presidency. We acknowledge the pressures inherent in a negotiation of this nature, but we would consider it to be an abdication of our duty to scrutinise the Government's position in the Council of Ministers if we were to waive our scrutiny reserve in these circumstances.

We should therefore be grateful if you would deposit the latest Presidency compromise text and provide an Explanatory Memorandum which includes more detailed information on the reasons for the change in the scope of the Directive; the likely impact of those changes on existing levels of consumer protection in the UK; and an indication of the views of businesses and consumers.
15 December 2010

11805/10: Proposal for a Council Regulation on the translation arrangements for the European Union patent

Letter from Baroness Wilcox to the Chair

I would like to update you on recent developments regarding translation arrangements for the EU patent, including the outcome of the extraordinary Competitiveness Council on 10 November which I attended, and at which EU patent languages was discussed.

Following failure to achieve a unanimous political agreement at the Competitiveness Council on 11 October, the Belgian Presidency made a final valiant effort to find a compromise which might be acceptable to all 27 Member States. The Presidency's proposed further compromise (presented in Council doc. no. 15395/10) focussed around a transitional period during which EU patents granted in French or German would have to be translated into English as well.

Although this compromise added yet more complexity to the proposed Regulation, the vast majority of Member States were prepared to accept it if it would lead to a unanimous agreement. However, Italy and Poland, whilst being prepared to negotiate, ultimately could not accept the terms of the compromise. Spain, however, continued to reject any idea of a three language regime, arguing it would be discriminatory.

In his summing up, the Belgian Minister conceded that it is now clear that unanimity on EU patent languages cannot be achieved. He added that the Presidency will now reflect on how to capitalise on the momentum

created. This may of course mean the use of enhanced cooperation - an agreement by fewer than 27 to create a patent valid only in those states. The UK Government are still considering whether this is something that we should be involved in. Should a proposal emerge that has a real prospect of success, under enhanced cooperation or otherwise, the Government will of course ensure that a suitable impact assessment is available.
17 November 2010

Letter from the Chair to Baroness Wilcox

Thank you for your letter of 17 November. We thought this was an important proposal, so it is disappointing that a language regime could not be agreed.

We would be grateful to be kept informed of any further progress.
8 December 2010

Doc 8969/09: Proposal for a recast directive on combating late payment in commercial transactions

Letter from Mark Prisk to the Chair

I am writing to alert your Committee that the Directive has now been approved by the European Parliament.

In practice this means that the protections enjoyed by UK businesses operating in the UK will now be extended across Member States.

New payment periods

The standard deadline for paying bills will be 30 days, mirroring UK arrangements.

The Directive uses rather convoluted language regards business-to-business payments but the effect is the same as legislation in the UK: parties can negotiate their own terms and suppliers are free to challenge what they perceive to be unfair practice.

The language used is that the general deadline will be 30 days unless otherwise stated in the contract. If both parties agree, it is possible to negotiate up to 60 days and the payment period may be further extended beyond 60 days if "expressly agreed" by the creditor and the debtor in the contract and provided that it is not "grossly unfair" to the creditor.

For public-to-business payments the general deadline is 30 days. If the two parties wish to extend the payment period, this has to be "expressly agreed" and "objectively justified in the light of the particular nature or features of the contract" but under no circumstances may the deadline for public authorities to pay a bill exceed 60 days.

Member states may choose a payment deadline of up to 60 days for public entities providing healthcare. This is because of the special nature of bodies such as public hospitals, which are largely funded through reimbursements under social security systems.

Interest rate, compensation and verification period

Arrangements here match UK legislation with the exception that the compensation payment has been simplified into a single amount regardless of contract value.

The statutory interest rate on overdue payments will be the reference rate plus at least 8%. The creditor is also entitled to obtain from the debtor, as a minimum, a fixed sum of € 40, as compensation for recovery costs.

The verification period for ascertaining that the goods or services comply with the contract terms is set at 30 days. This period may be extended in the case of particularly complex contracts, but only if expressly agreed

and provided it is not grossly unfair to the creditor.

Next steps

The new directive enters into force 20 days after its publication in the EU Official Journal. Member States will then have two years to implement the new measures (December 2012).
14 December 2010

Letter from the Chair to Mark Prisk

Thank you for your letter of 14 December, drawing our attention to the latest position on this proposal.

We have noted that a measure has now been agreed, and, whilst we were grateful for this update, we do not consider this need affect the clearance already given.
12 January 2011

17333/08: Proposal for a recast Directive of the European Parliament and of the Council on the restriction of the use of certain hazardous substances in electrical and electronic equipment (RoHS)

Letter from Mark Prisk to the Chair

I refer to your letter of 2 February 2011 regarding the achievement of a first reading agreement between the European Parliament and the Council on the RoHS recast Directive in November 2010.

I would like to apologise for missing the opportunity of keeping in touch during the final negotiations. Despite a very fast moving situation with uncertain outcomes which I describe below, we could have done more to alert you to the trends, even though the updates might not have been particularly helpful, as the content and national positions were changing dramatically down to the wire.

I will not repeat the content of my letter to you of 17 January. However, I would like to highlight that there was a hard fought battle over whether to keep the current scope or move to a modified scope which would include all electrical equipment. The majority of Member States and the European Parliament favoured the latter. However, we consider that the actual effect of this move will be limited given the key concessions secured by the UK:

- several broad categories of exclusions;
- 8 year transition period;
- impact assessment by the Commission within 3 years specifically to consider if the exclusions should be extended.

Until we were offered the key concessions, which was only a very short time before the agreement was reached, the UK was prepared to force the negotiation to a second reading. We then took the view that, given the overwhelming opposition to our position, the last minute offer of solid concessions in first reading was a better outcome than the risk associated with moving to second reading, where we could have lost both the concessions and other important parts of the package. An example is that we had in the package at that point the principle that new substances should not be added to the restricted list until such a move was supported by scientific evidence. As you know this was a major UK point.

In the circumstances, we have achieved a good deal and minimised the effect of the changes in terms of impact on business. This is also the feedback we have received from industry so far.

We are already revising the impact assessment to take account of the final text and set out the implications of the change to scope. However, indications are that they are likely to be minimal given the broad exclusions and the extended timescale over which changes would take place. There is potential for further changes to the

scope as a result of evidence from the Commission's new impact assessment.

I hope that I have allayed your fears that there was any intention to delay informing you of developments. We will forward the impact assessment to you during June.
16 February 2011

Letter from the Chair to Mark Prisk

Thank you for your letter of 16 February, which raises two points.

First, as regards the handling of this document, we did not interpret the delay in keeping us in touch with developments as intentional. However, we were concerned to be presented in your letter of 17 January with what was effectively a fait accompli, and we were therefore grateful for your recognition that, notwithstanding the fast moving situation in Brussels, more should have been done to alert us.

Secondly, we recognise the difficult negotiating position in which the UK found itself, and we would not wish to contest that you achieved the best result possible outcome, given the circumstances. Whether or not that represents a good outcome is of course another matter, given the cost-benefit doubts about even the original proposal, and, for that reason, we will await with interest the revised Impact Assessment.
2 March 2011

17333/08: Proposal for a recast Directive of the European Parliament and of the Council on the restriction of the use of certain hazardous substances in electrical and electronic equipment (RoHS)

Letter from Mark Prisk to the Chair

I refer to my letter of 16 February 2011 regarding the first reading agreement between the European Parliament and the Council on the proposals for a RoHS recast Directive and your letter of 2 March 2011.

As agreed, I attach a revised copy of the Impact Assessment. The 2011 Impact Assessment (IA) attached estimates that costs are lower than previously calculated in the 2009 IA. This is in part due to updating underlying assumptions. The most significant difference is that the 2009 IA includes transition costs for R&D over a six year period (as it includes costs in 2010); whilst in the 2011 IA the R&D costs start from 2011 and cover five years only. The average annual costs are lower as they now exclude transition costs.
28 June 2011

Letter from the Chair to Mark Prisk

Thank you for your letter of 28 June, enclosing an Impact Assessment.

We have noted this, and your comments on it, and are content to let matters rest on that basis.
13 July 2011

THE MEDIA PROGRAMME – EU PUBLIC CONSULTATION

Letter from Ed Vaizey to the Chair

The United Kingdom (UK) Government has recently responded to a European Union (EU) public consultation on the MEDIA Programme, which will inform the Commission's proposal for the new MEDIA Programme for the period 2014 – 2020. I enclose a copy of that response for your consideration.

The MEDIA Programme is the EU's support programme for the European Audiovisual industry. The current programme, which began in 2007 and runs till 2013, has a budget of €755m and has supported the development and distribution of thousands of films as well as training activities, festivals and promotion projects. The European Commission is about to launch two new strands of funding under the MEDIA Programme: a cinema digitisation fund and a guarantee fund to improve access to finance.

The results of the online consultation will be analysed and summarised in a report that will be published on the Commission website in the first quarter of 2011. A public meeting with relevant stakeholders from the audiovisual sector will be held in Brussels at the beginning of 2011. The Commission will take this consultation into account when drafting its proposal in view of establishing a Decision of the European Parliament and Council for a new Programme of support for the European audiovisual sector from 2014 onwards.
14 December 2010

Letter from the Chair to Ed Vaizey

Thank you for your letter of 14 December enclosing a copy of the Government's response to the public consultation launched by the Commission on the new MEDIA Programme for 2014-20.

The Committee has noted that the Government's overriding objective for 2014 onwards is to secure a smaller EU budget and that, as a result, it will seek to ensure that the costs of any new fields of action proposed for the next MEDIA Programme will come from a reprioritisation of existing, rather than new, resources.

We shall look forward to considering the Commission's proposals in due course.
12 January 2011

13983/08: Proposal for a Directive of the European Parliament and of the Council amending Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding

Letter from Edward Davey to Chair

I am writing to update you on progress with this proposed directive. Despite a very disappointing outcome from the European Parliament's first reading, we have secured solid support for the UK's position within Council.

As you will be aware, the first report from the European Parliament's Women's Rights and Gender Equality Committee was rejected by the Parliament in May 2009. The file was referred back to the Women's Rights and Gender Equality Committee to prepare a second report, with an opinion from the Employment and Social Affairs Committee.

The committees put forward amendments which would have gone much further than the Commissions original proposal, in requiring, inter alia, a period of fully paid maternity leave and fully paid paternity leave. As a result of the strength of the concerns which were voiced about the costs of their proposed amendments, the two committees commissioned an Impact Assessment (IA) on their proposals. The IA looked at costs and benefits of proposals for 18 or 20 weeks of fully-paid maternity leave and for two weeks of fully-paid paternity leave. The IA looked only at 10 Member States but showed there would be significant costs. Estimated public expenditure costs for the UK over a 20-year period of €51 or 57 billion for 18 or 20 weeks of maternity leave and €1 0 billion for 2 weeks of paternity leave. For France the costs were estimated at €32 or 40 billion for 18

or 20 weeks of maternity leave and €3 billion for 2 weeks of paternity leave.

On 20 October 2010 the European Parliament agreed its first reading position. This included 77 amendments to the Commission's original proposal, largely along the lines suggested by the Parliament's Women's Rights and Gender Equality Committee. Her Majesty's Government's position was to oppose the great bulk of these amendments. Significant amendments agreed by the European Parliament include those providing for:

• 20 weeks maternity leave, in principle at full pay (the last four weeks may be at a level of at least 75% of full pay and subject to a ceiling);
• 20 weeks adoption leave on the same terms;
• 2 weeks paternity leave on the same terms.

EU Ministers discussed the position adopted by the European Parliament and future prospects for negotiations at the Employment Council (EPSCO) on 6 December 2010.
The UK jointly tabled a statement for the Council minutes together with the Czech Republic, Denmark, Estonia, Germany, the Netherlands, Slovakia, and Sweden. The statement is reproduced at Annex A. While recognising the importance of common minimum standards of maternity support, it expressed concern about the scope of the Parliament's amendments and made the point that it is hard to envisage how an acceptable accommodation between the Parliament and the Council could be found. A number of other delegations expressed similar concerns during the debate.

In summing up, the Belgian Presidency indicated that it felt that any Council Common Position on the length and remuneration of maternity leave was more likely to be found on the basis of the Commission's original proposal than on the European Parliament's position. The Presidency wished to develop a document together with the future Hungarian and Polish Presidencies to set out a way forward on this proposal. At the time of writing, that has not been shared with Member States. Should it appear that the Council is approaching a Common Position I will, of course, write to you again to seek scrutiny clearance of the Government position. However, given the strength of feeling expressed by Ministers at EPSCO, I would not expect there will be a conclusion to this process any time soon. We will of course be seeking to ensure an outcome which respects the principles of subsidiary and proportionality will not hamper the UK's ability to put in place our own domestic arrangements to support families and which do not impose significant costs on Member States.
11 January 2011

Letter from the Chair to Edward Davey

Thank for your letter of 11 January informing us of the outcome of the European Parliament‘s first reading vote on the proposed Directive last October and subsequent deliberations in the Council of Ministers.

We note that the prospects of reaching a compromise agreement between the European Parliament and Council appear to have receded. We should be grateful if you would
continue to provide regular progress reports on developments within the Council and the European Parliament.
26 January 2011

FUTURE EU CULTURE PROGRAMME – GOVERNMENT RESPONSE TO EU PUBLIC CONSULTATION

Letter from Edward Davey to Chair

The UK Government recently responded to an EU public consultation on the future Culture Programme which will influence the future EU Programme for culture to replace the current one from 2014 onwards.

Currently the EU‘s Culture Programme (2007-13) has a budget of €400 million for projects to celebrate Europe‘s cultural diversity and enhance shared cultural heritage through the development of cross-border

co-operation between cultural operators.

The European Commission launched a public consultation in September on the future of the Culture Programme and the consultation ended on 15th December and the DCMS response took into account the views of HM Treasury, Cabinet Office and UK Rep. In order to try and encourage engagement and responses to the consultation we included a link to the Commission Consultation on the DCMS website, and alerted a wide range of interested parties – the Devolved Administrations, Local Government, and cultural operators. Please find attached a copy of the Government response at Annex A. The Commission intends to analyse all the responses and summarise into a report to be published in Spring 2011.

The Commission had said that there was a need to see how the future Programme's objectives and action lines should be revised in light of current developments so that they:

 Respond to current European and global developments and exploit the cultural sector's potential to contribute to the Europe 2020 strategy for smart sustainable and inclusive growth;

 Ensure the greatest possible structuring and multiplier effects through its funding, which should have a real European added value;

 Prioritise spending on project content rather than administration- by having streamlined and cost effective a programme design as possible.

The first question on the consultation document (2.1) asked ―Do you think there is a continuing need for a specific EU Programme for Culture?‖ and we chose not to answer this question, as HM Treasury commented that the Government priority is to seek a smaller EU Budget in future years. HM Treasury further stated that we could not signal that HMG might want a continuing EU Culture Programme in future, because the Government has not decided this yet, and will need to take a view on which existing budget programmes it sees as priorities for funding in the round. They also stated that the Government believes that the budget should focus on the key challenges of the 21st century- global competiveness, global warning and global poverty. The UK response (2.9) fully explained the UK position on this point and our views on the objectives for the new Culture Programme.

UK cultural operators have benefitted from getting funding from the Culture Programme -last year the UK had a 67% success rate for strands 1.1. and 1.2.1. co-operation projects and it is likely that this source of funding will become more important in future years. Access to funds from the programme requires cooperation between cultural operators in at least three, usually more, Member States; projects are thus guaranteed cross -cultural involvement. The benefits to the UK are essentially that the Culture Programme offers new opportunities for involvement in trans-national partnerships with other cultural operators. However the UK is a net contributor to the EU budget and as such most EU programmes, including the culture programme, have a net cost to the Exchequer.

We hope that the UK response to the consultation will help ensure that we try and inform and shape any future programme for UK cultural operators and we also hope that the UK continues to have success at applying and securing funding from this stream of finance.
13 January 2011

Letter from the Chair to Edward Davey

Thank for your letter of 13 January enclosing a copy of the Government's response to the public consultation on the future of the EU's Culture Programme.

We note that the Government is looking at all aspects of EU expenditure with a view to achieving a smaller EU budget in the negotiations on the next Financial Perspective.

26 January 2011

Proposal for a Directive of the European Parliament and of the Council repealing Council Directives *71/317/EEC, 71/347/EEC, 71/349/EEC, 74/148/EEC, 75/33/EEC,* 761765/EEC, *76/766/EEC* and *86/217/EEC*

Letter from David Willetts to the Chair

The Explanatory Memorandum, dated 6 January 2009 and relating to the Commission's original proposal to repeal eight "Old Approach" directives in the field of metrology, was cleared by the Commons Scrutiny Committee and Lord's Sub-Committee B (Internal Market).

Lord Drayson wrote to Lord Roper on 30 April 2009 to explain that the Presidency had decided not to proceed further with the proposal as a result of lack of support from other Member States. The current proposal reflects the response from the European Parliament and reflect recent changes to the Treaty. The proposal now falls under Article 114.

This proposal is to repeal only one of the eight directives originally proposed namely Directive *761766/EEC* on the approximation of the laws of the Member States relating to alcohol tables. Commission Regulations *1990/2676/EEC* and *2000/2870/EEC* contain most of the content of this Directive and references to the international standards for alcohol tables are identical to the tables provided in the Directive and can continue to be used for national regulation.

The proposal imposes no regulatory burden on the UK.

The future of the remaining Directives is still uncertain. Under the on-going review of the Measuring Instruments Directive (2004/22/EC) on which the Commission is scheduled to report to the European Parliament by 30 April 2011 consideration will be given as to whether any of the remaining Directives are still required and if so whether they should be converted into new Annexes under that directive. In such a case any provisions would become mandatory but a Member State would still be able to decide whether it wished to regulate in that area.

If a substantive proposal emerges it will, of course, be subject to a further Explanatory Memorandum at that time.
23 November 2010

Letter from the Chair to David Willetts

Thank you for your letter of 23 November, informing us that only one of the eight measures referred to in this document will be repealed straightaway, and that a decision will be taken on the others in the context of the current review of Directive 2004/22/EC.

Unfortunately, your letter did not reach us at the time, but we have now noted the position. Since the repeal of obsolete legislation must in principle be desirable, we hope that this will eventually prove to be possible in the case of these outstanding Directives.
26 January 2011

17333/08: Proposal for a recast Directive of the European Parliament and of the Council on the restriction of the use of certain hazardous substances in electrical and electronic equipment (RoHS)

Letter from Mark Prisk to the Chair

I refer to my letter to you of 20 July 2010 warning you there were strong indications that the Belgian Presidency would work with the European Parliament and the Council to achieve a first reading agreement. This has now been achieved, with COREPER agreeing the text on 11 November and the European Parliament on 24 November. The agreed text will now be submitted to an appropriate Council meeting as an "A" point - not for discussion.

Overall, I believe this is a good outcome for the UK, the main features of which are listed below.

Scope

The Directive envisages a move, after 8 years, to a scope covering all electrical and electronic equipment (EEE) rather than, as now, limited categories of equipment.

There has also been a modification to the definition of EEE which could in effect mean that a product with any electrical function is brought into scope rather than as it is understood at present by most member states who believe that a product is in scope only if it's main function is electrical.

The UK lobbied heavily for scope not to be extended or changed without an impact assessment. However it is worth noting the concessions achieved by the UK:

1. For equipment being brought into scope for the first time by these changes, the Directive will only apply 8 years after entry into force. In addition, 3 years after entry into force, the Commission will carry out an impact assessment and consider the need for additional exclusions from scope.

2. The following broad categories are entirely excluded from scope, even after 8 years:

military equipment
transport equipment
off road equipment
large scale industrial tools
fixed installations
photovoltaic panel arrays
certain R&D equipment

Although this is not an ideal outcome in terms of process, I believe that given the overwhelming odds against the UK position, we have achieved a position on scope which is reasonable and practical and minimises the costs of the extension. It will also allow time for the results of the Commission's impact assessment to be applied if appropriate, time for industry to modify products or, if not possible, time for them to apply for specific exemptions.

Annex IV - Restricted substances

No new substances have been added to the restricted list, but instead a system to update the list when scientific evidence supports a new restriction. This is closely linked to REACH and is the outcome that the UK wanted.

Annex III - List of substances to be studied as a priority for adding to Annex IV

Annex III as proposed by the Commission has been deleted. There will, however, be a recital naming the 4 substances which the Commission included in their proposal.
This is a good outcome given that the EP Environment Committee had proposed the addition of some 35 addition substances to Annex III. This would have meant a "blacklist" of substances that had been added without supporting scientific evidence.

Application of the New Legislative Framework

We maintained and enhanced other aspects of the recast which offered simplification of the previous

Directive, e.g. the application of "CE" marking and associated procedures.
17 January 2011

Letter from Mark Prisk to the Chair

The Committee had before it today your letter of 17 January, drawing to our attention the fact that a text of this proposal was agreed with the European Parliament in November 2010, and was to be submitted to an appropriate Council as an A point. This gave rise to two concerns, which the Committee would like to register.

First, when the previous Committee cleared this proposal in October 2009, it did so in the light of an assurance from the then Minister that it would be kept informed of developments, whereas the next indication from Government came in your letter of 20 July 2010, indicating that the Belgian Presidency was seeking to achieve a first reading agreement later that year (but giving no indication as to its likely content).

We recognise that what happened prior to the General Election was the responsibility of the previous Government, but we were somewhat surprised — to put it mildly — to be told in your latest letter that the agreement reached involves an extension in the scope of Directive, so as to cover all electrical and electronic equipment, and could also cover products with any electrical function, rather than those where the main function is electrical.

In our view, that information should have been conveyed to us before agreement was reached on the proposal, and there should also have been some indication of the likely impact of these changes, particularly as it had previously been said that it was not clear that even the original proposal could be justified in terms of the costs and benefits involved. We would therefore be grateful if you could let us have a revised Impact Assessment, based on the text now agreed.
2 February 2011

EU BUSINESS HUNGARIAN PRESIDENCY

Letter from Edward Davey to the Chair for Information

January saw the start of the Hungarian Presidency of the European Council. This is the first time the Hungarians have held the rotating Presidency. I am writing to set out what we anticipate to be their priority areas for BIS.

The Presidency has set out four priorities: (i) growth; (ii) a stronger Europe (food, energy and water), (iii) Citizen friendly Europe and (iv) enlargement. BIS in particular have an interest in the Growth element of the Hungarian agenda specifically the forth coming Single Market Act.

Internal Market

Under the internal market agenda the Presidency has identified very few priorities other than the services directive (working groups will star in late January looking at implementation) and the Single Market Act (despite the name is an action plan of measures to improve the Single Market due in April/May depending upon the European Commission progress. The Commission consultation on the report closes on 28 February).

In January, the Commission launched its consultation on the mutual recognition of professional qualifications Directive, which closes on 15 March.

It is likely that the Commission will issue new initiatives, including:

o a strategy paper on the Internal Market Information System (an IT system to connect public authorities)

o around April, an alignment package for the single market for goods. This is designed to rationalise 10 Directives governing the free movement of manufactured goods in the EU. Changes are likely to be technical

in nature. ,

o publication of a standardisation package to set European standardisation policy towards 2020. This will include a legislative proposal revising the existing legal framework on EU standardisation, and an umbrella Communication on policy proposals for reform of the current standardisation system.

Intellectual Property

The Hungarians have committed to continue facilitating discussion on the EU Patent, taken forward under the *enhanced cooperation* process. This enhanced cooperation is likely to involve all Member States except Spain and Italy. We can expect 4 streams of work under the Presidency. They are (i) agreement of an Authorisation Decision, possibility that a vote may happen as before March – this is required to trigger enhanced cooperation; (ii) ECJ will give its opinion on the proposed Patent Court in early March; (iii) and (iv) two Regulations under enhanced cooperation covering the establishment of the EU Patent title and the linguistic regime.

We do not expect the Hungarians to take forward copyright term extension. A Directive on the mutual recognition of orphan works (works whether copyright ownership is unknown) will be published early this year and towards the end of their Presidency a proposal on Collective Rights Management will follow. In addition, during the Hungarian Presidency there is likelihood of a communication being published on improving IPR enforcement in the single market.

Towards the end of February the Commission is likely to look for an agreement on a negotiating mandate for a possible Council of Europe Convention on the protection of the rights of broadcasting organisations. Once the result of the proposals and signature of the mandate is available, we will inform the Committee as soon as we can.

Company Law

On company law the Presidency is trying to revive and agree the proposal for a European Private Company Statute, the Commission will also publish in February proposals on the interconnection of business registers. The Presidency has indicated that both issues may be for agreement at the May Competitiveness Council however in both cases we think a report on progress is more likely.

A Green Paper on corporate governance for public companies will be published in April and we expect the commission to publish proposed legislation to follow up its Green Paper on corporate governance in the financial institutions in June. We expect the proposals to consist of measures to amend the Capital Requirements Directive, predominantly a HMT lead but with some issues for BIS.

The Hungarians are also trying to revive the proposal which the UK supports to exempt micro entities from EU accounting requirements.

Industry

A communication is expected on raw materials and a review on the Small Business Act during February. Both documents are non-legislative and likely to be the subject of Council conclusions.

Research, Innovation and Space

The Hungarians are looking to agree conclusions to the interim evaluation of the Seventh Framework Programme for Research and Development (FP7) at the March Competitiveness Council. They have also scheduled a debate on the successor of FP7, on which a Commission consultation is due to be launched in February.

We are looking to the Hungarian‘s to make some early progress on negotiations on the Euratom Framework Programme for 2012-13, on which funding for the Joint European Torus (JET) is largely dependent.

A Commission Communication is due to be published in the first half of 2011 on the selection criteria and governance mechanisms for European Innovation Partnerships, an initiative proposed in the "Innovation Union" flagship of the Europe 2020 Strategy. It is likely to be the subject of Council Conclusions.

In addition, a Commission communication is due to be published this spring setting out proposals for an EU Space Policy for 2014-20. In terms of content GMES (Global Monitoring for Environment and Security), Galileo and Space Situational Awareness are likely to be the three priorities. The Communication is also likely to set out *initial proposals* for an industrial policy for the European space sector including using regulation to promote
growth in the sector; standardisation policy and space specific public procurement instruments.

Employment

The Hungarian Presidency is expected to progress work in support of the better implementation of the Posting of Worker Directive and to seek a decision in the form of Council Conclusions agreeing to initiate a pilot of an electronic exchange system to improve administrative co-operation between Member States.

The only action anticipated during the Hungarian Presidency on the Pregnant Workers Directive is a progress report by the European Commission scheduled to be presented at the June Employment and Social Affairs Council.

While the European Commission is currently consulting European Social Partners on the Working Time Directive, any subsequent proposals are unlikely to issue in time for any substantive discussion during the Hungarian Presidency.

Higher Education

A Commission Communication proposing benchmarks on employability and the mobility of learners is due to be published in March. As well as Commission Communications on promoting lifelong learning and skills and on the recognition of non-formal learning which are expected later in the Spring. I understand that any further work resulting from the above Communications will be taken forward under the Polish Presidency.

Trade

The Doha Development Agenda (DDA) may make significant progress under the Hungarian Presidency. The European Union has a number of Free Trade Agreements with several countries and regions under negotiation which are making good progress. The EU-India FTA is heading toward the end-game and although negotiations are ongoing and with difficult issues remaining, we expect it may conclude by the summer. There is also a possibility that the EU-Singapore FTA may be concluded by the summer too. Hungary has shown support for these FTAs.

In April the Commission is expected to adopt a proposal to reform the Generalised System of Preferences (GSP), with the new scheme due to come into effect on 1st January 2014. In the meantime we expect the Presidency to try to reach agreement with the European Parliament and Council on the GSP Rollover proposal, which would extend the current GSP scheme unchanged for two years, between 31st December 2011 and 31st December 2013, and on the measures to grant autonomous trade preferences to Pakistan following the catastrophic floods last year

Councils

Scheduled under the Hungarian Presidency there will be two Competitiveness Councils on 10-11 March and 30-30 May, both in Brussels. There is a Telecoms Council on 27 May and six General Affairs & Foreign Affairs Councils, covering Trade issues which the Foreign & Commonwealth Office takes the lead. An informal Competitiveness Council will also take place on 11-13 April.

Machinery of Government

Please note that the responsibility for the Telecoms policy has now been transferred from this Department to Department for Culture, Media and Sports, although cyber security policy remains here. I understand that the Hungarian Presidency will continue work towards a first reading deal on extending the mandate of European Network and Information Security Agency.

I hope you find the above information useful.
12 February 2011

5091/06: PROPOSAL FOR A COUNCIL REGULATION ON THE INDICATION OF THE COUNTRY OF ORIGIN OF CERTAIN PRODUCTS IMPORTED FROM THIRD COUNTRIES

Letter from Edward Davey to the Chair

Further to my predecessor's letter of 18 February 2010, I am writing to update you on the position of the proposal for a Council Regulation on Origin Marking introduced in 2005.

At the end of last year, the European Parliament adopted a First Reading Opinion, expressing support for the proposal but suggesting a number of amendments. The proposal has now moved to Council where divisions remain between Member States. Nevertheless, discussions will begin later this month in the Trade Questions Council Working Group. The UK will engage constructively in these, but we continue to have strong reservations about the proposal in its current form on the grounds that it will be expensive to implement and introduces unnecessary administrative burdens.

We will of course keep Parliament fully informed of any progress on this dossier.
12 February 2011

Letter from the Chair to Edward Davey

Thank you for your letter of 12 February, giving an update of the current state of play on this proposal.

We have noted the position, and were grateful for your undertaking to keep us informed of any progress. We would also be glad if you could keep in mind the comments by the last Committee in its Report of 8 February 2006 about the importance of our being alerted in good time if there is any question of the proposal being adopted in its present form.
16 February 2011

5091106: PROPOSAL FOR A COUNCIL REGULATION ON THE INDICATION OF THE COUNTRY OF ORIGIN OF CERTAIN PRODUCTS IMPORTED FROM THIRD COUNTRIES

Letter from Edward Davey to the Chair

Following our exchange in February this year on the state of play on this Commission proposal I thought it would be helpful to update you by summer recess.

There has been considerable activity in the Council over the last 6 months but that this did not lead to any major shift in the division between Member States.

The Hungarian Presidency made considerable efforts to achieve progress arranging discussions on the dossier at five Commercial Questions Council Working Group meetings during the first half of 2011. As the Presidency has reported to the European Parliament, the Working Party thoroughly examined the proposal and the modifications adopted by the European Parliament. Discussion focused on the general purpose of the

proposal, the definitions, product coverage, geographical coverage and the decision-making process. The latter involved Member State Customs Authorities as well as trade policy experts. However it was not possible to obtain the required majority for the adoption of any first reading position by the Council.

The UK made a full and constructive contribution to these discussions. Our position however remains unchanged: we continue to have strong reservations about the proposal.

The dossier now passes to the incoming Polish Presidency to take forward.
4 August 2011

Letter from the Chair to Edward Davey

Thank you for your letter of 4 August, giving a further update of the current state of play on this proposal.

We have noted the position, and would be grateful if you could keep us informed of any progress. We would also be glad if you could continue to bear in mind the comments by the last Committee in its Report of 8 February 2006 about the importance of our being alerted in good time if there is any question of the proposal being adopted in its present form.
7 September 2011

Government response to the European Commission consultation on the Mutual Recognition of Professional Qualifications

Letter from Edward Davey to the Chair

I am writing to you to highlight the Government's response to a European Commission public consultation on the Directive on the Mutual Recognition of Professional Qualifications (2005/36/EC).

The consultation, which closed on 15 March of this year, forms part of a broader review of the Directive. As you may be aware, the European Commission aims to produce a Green Paper in June and a legislative proposal by the end of 2011.

The response is attached, and can also be found online
http://www.bis.gov.uk/assets/biscore/europe/docs/u/11-794-uk-government-response-mutual-recognition-professional-qualifications.
26 April 2011

Letter from the Chair to Edward Davey

Thank you for your letter of 26 April enclosing a copy of the Government's formal response to the European Commission's consultation paper on possible changes to the 2005 Directive on the mutual recognition of professional qualifications.

The issues highlighted in your response will be helpful in informing our scrutiny of the Commission's forthcoming Green Paper which you expect to be published in June.
11 May 2011

118115/10: Proposal for a Council Decision authorising enhanced cooperation in the area of creation of unitary patent protection

Letter from Baroness Wilcox to the Chair

Thank you for your recent consideration of this issue. I understand the Committee had particular concerns on the timing planned for adoption of the Decision at the 10 March Competitiveness Council given that we do not expect the opinion of the Court of Justice of the EU on the proposed patent court arrangements before 8 March.

As I mentioned in our EM of 7 January, we wanted to ensure that if the Court of Justice of the EU (ECJ) concluded that it required wider powers under Article 262 TFEU, then the UK could withdraw from the request for enhanced cooperation.

We have now been given assurances by the Commission and the EU Presidency that although there are no specific provisions in the Treaty, a declaration to be adopted at the same time as the authorisation decision will make clear that any state may withdraw providing the implementing regulations have not been agreed. The proposed text would read

Any Member State listed in Article 1 *may notify* to *the Council and the Commission that it is withdrawing from the enhanced co-operation in the area* of *unitary patent protection as authorised in this Decision, provided that* at *the time* of *that notification no acts have yet been adopted within the framework* of *the enhanced co-operation.*

Reopening the text of the decision itself was not a viable option given the risk of further amendment and debate which might hold up progress on this important file. And reaching agreement on the decision at the 10 March Competitiveness Council would allow the Commission to come forward with proposals for the implementing regulations (on the patent and on language arrangements) very shortly afterwards.

Clearly we will have to take a view on UK participation when we receive the ECJ Opinion currently expected on 8 March, and we will update the Committees accordingly. But the option of remaining within the enhanced cooperation, unless we have to withdraw, allows us to continue to influence the design of the system and ensure progress.
16 February 2011

Draft Council Decision authorising enhanced cooperation in the area of the creation of unitary patent protection (32365) 18115/10

Letter from the Chair to Baroness Wilcox

Thank you for your letter of 16 February.

The European Scrutiny Committee discussed the approach to the Council Decision, which you outline in your letter, at its meeting yesterday.

We concluded that the declaration to be adopted at the Council meeting on 10 March does not overcome the problem that the Treaty does not provide for Member States to withdraw from a decision to enter into enhanced cooperation. As such, the proposed course of conduct appears to be unlawful, and would set a negative precedent for the binding force of future decisions to enter into enhanced cooperation.

You say that reaching agreement on 10 March would allow the Commission to come forward with proposals for the implementing regulations "very shortly afterwards". I daresay it might, but that is not a reason to ignore the procedure provided for in the Treaty. This is the type of "fudge" that undermines the rule of law and sullies the ED's reputation.

As we said in the conclusion to our Report on 9th February, the Opinion of the Court of Justice clearly has a bearing on this Council Decision to authorise enhanced cooperation, so we fail to see why the Decision has to be adopted two days after the Opinion is published. We would like an opportunity to scrutinise the Opinion before the Council Decision is adopted, rather than after it has been adopted, in accordance with normal

scrutiny procedure. So we take this opportunity to ask you again to insist that the Council

Decision be postponed. This would give proper time for your consideration and our scrutiny of the Opinion without having to concoct a procedure not provided for in the Treaty. We do not, therefore, give our agreement to the UK voting in favour of adoption on 10 March and the draft Council Decision remains under scrutiny.

We also ask you to deposit the Opinion of the Court of Justice, together with an Explanatory Memorandum, as soon as possible after 8 March.
3 March 2011

Proposal for a Regulation of the European Parliament and of the Council on textile names and related labelling of textile products

Letter from Edward Davey to the Chair

I am writing to inform you about progress on the Proposal for a Regulation of the European Parliament and of the Council on textile names and related labelling of textile products. The Proposal has already been cleared through scrutiny, but I thought you would want to be aware of its progress through Second Reading, where there has been some lobbying to widen the scope of the Regulation.

Directive 2008/121/EC on textile names (recast) requires textile products placed on the European Market to be labelled with or accompanied by an indication of their fibre content. This provides important protection for consumers. The fibre names used on the label and agreed allowances used to calculate fibre content are set out in Annexes to the Directive, which are updated from time to time as new fibres are developed. Directives 96n3/EC and 73/44/EEC specify the methods of analysis to be used to check whether the composition of textile products is in conformity with the information supplied in the label.

As you will recall, the Proposal will recast Directive 2008/121/EC into a Regulation and therefore provide a legal instrument which is directly applicable in member states. It will also repeal Directives 96n3/EC and 73/44/EEC on methods of analysis and transform them into a technical annex to the main Regulation laying down uniform methods for official tests. It is proposed to move the methods to the European Committee for Standardisation (CEN) in due course. The Proposal also establishes a procedure to be followed by a manufacturer requesting the addition of a new fibre name to the technical annexes of the Regulation. The intention is that, together, this will reduce burdens on business while retaining the consumer protection in the current Directives.

I am fully supportive of the original proposal for the following reasons:

• The proposal will shorten the time from investment to return for fibre producers and reduce costs for businesses when applying for a new fibre authorisation.

• The Regulation will enable a new fibre name to be placed on the market some 12 months quicker than is currently possible. For industry, the benefits of reducing delay by one year is estimated to be between £88,000 and £1.8 million Euros per fibre.

• It will allow fibre users and consumers to benefit sooner from the use of novel fibres and innovative products.

• It will reduce the burden for public administrations in respect of any additional names added to the list of permitted fibres which will apply directly to the law of member states; national legislation will not have to be amended to implement the changes.

• Moving the testing methods for new textiles from the Committee of Textile Names and Labelling to the European Committee for Standardisation (CEN) will bring a significant reduction in administrative costs. As

all CEN standards are reviewed regularly to ensure that they are still up-to-date and of use to industry and for public enforcement purposes, this process will allow for new development to be taken into account and improvements made.

A draft regulation was agreed by a qualified majority of Member States in the Council and we were expecting a first reading deal with the European Parliament. However, the text that eventually passed in Parliament at first reading saw amendments which widened the scope of the proposal - namely to extend the regulation to cover mandatory country of origin marking or "made-in" labelling for imports from 3rd countries, mandatory labelling of animal derived products, mandatory tests for allergens and the labelling of toys. This is disappointing as I don't believe it would be helpful to extend the scope of the proposed regulation in this way - this is a simplification measure and if such an extension were needed it should be done separately from this simplification exercise.

We have particular reservations about the additions to the text on origin marking and on the mandatory labelling of animal derived products. I think origin marking would impose an unnecessary and additional burden on business when the mischief it is intended to address is already covered by the EU's existing Intellectual Property and Unfair Commercial Practices Directives. I also believe that it is inconsistent with the EU's open markets/trade facilitating objectives, and is not beneficial to consumers when combined with a globalised production chain and complex rules of origin. Which? (The UK's Consumers' Association) has been opposed seeing it as primarily a protectionist measure and the Commission's own Consumer Consultative Group came out against the proposal. Moreover, there is a separate Commission proposal to introduce compulsory country of origin marking for certain consumer products from third countries (including textiles and clothing) which is currently the subject of technical level discussion in the Commercial Questions Council Working Group. The European Parliament is in favour of this proposal: the UK retains strong reservations.

Currently the concerns about lack of transparency about textile products which contain animal products are addressed by other provisions such as the Unfair Commercial Practices Directive (UCPD). There is no explicit rule that manufacturers must declare if their product contains fur or other animal product, and industry are mostly opposed to such labelling on a mandatory basis as this would impose unnecessary burdens on them However, the UCPD requires traders not to omit material information which the average consumer needs, according to the context, to make an informed purchasing decision. From our better regulation stance we should be opposed to introducing an additional burden on business without evidence of need and in circumstances when it might not
affect the average consumer's choice.

The Regulation is now at Second Reading, which must be completed within 4 months to avoid conciliation. The Hungarian Presidency therefore wants to make progress on the regulation and is expected to offer the Parliament a compromise deal on "made-in" labelling. Namely, voluntary made-in labelling for imports from 3rd countries and products produced in the EU, but under harmonised conditions. So, a manufacturer can choose to label or not, but if he does, his labels must meet certain requirements. They are also expected to seek the Parliament's agreement to withdraw their animal labelling proposals but they are not optimistic that this will happen. Although I would prefer to accept the original simplification proposal, as agreed in Council, I am prepared to accept the voluntary made-in requirements proposed by the Presidency in order to reach agreement on the proposal as a whole. Whilst I remain convinced that labelling for animal products is covered in other legislation, I would agree to its inclusion for specific products, such as animal fur or seal-skins, in exchange for the removal of the mandatory requirements on made-in labelling. If the Parliament continues to insist on the inclusion of mandatory made-in labelling it is unlikely that I would be able to agree to the proposal as a whole.

I hope that you are content with my proposed approach, and am happy to answer any questions you may have.
4 March 2011

Letter from the Chair to Edward Davey

Thank you for your letter of 4 March drawing to our attention the amendments to this proposal put forward by

the European Parliament, and the efforts by the Hungarian Presidency to avoid conciliation.

As you observe, the original Commission proposal was cleared by the previous Committee in March 2009, and, although we have noted the extent to which the Parliament's amendments would widen the scope of the proposal, we are happy to leave to you to adopt the negotiating approach you consider most likely to produce an outcome acceptable to the UK.
9 March 2011

14183/08 and 16933/10: CONSUMER RIGHTS DIRECTIVE

Letter from Edward Davey to the Chair

I am writing to update you on progress in the negotiation of the Consumer Rights Directive.

Since I last wrote the Council have voted to agree a General Approach and have accepted the 10 December text by qualified majority. The UK voted in favour. I thank you for granting a waiver from scrutiny to allow the Government to participate in the vote.

The European Parliament Legal Affairs Committee (JURI) held its vote on amendments to the Directive on 21 January and the Internal Market and Consumer Protection Committee (IMCO) voted on 1 February. Although IMCO is the lead Committee, JURI has responsibility for the chapter on unfair contract terms and so its amendments to this chapter are contained in the IMCO Committee consolidated text which will be voted on in the European plenary vote.

The outcome of the Committee votes was that there was agreement to retain all chapters of the Directive, in contrast to the Council text in which the chapters on pre-contractual information requirements for on-premises contracts, sale of goods and unfair contract terms have been deleted. The European Parliament Committees' text contains a mix of full and minimum harmonisation measures. Broadly speaking the definitions, the rules on distance and off-premises selling and certain of the provisions on unfair contract terms are fully harmonised. The pre-contractual information requirements, rules on sale of goods (including consumer remedies and trader liability periods) and the annexes of contract terms which are regarded as unfair or presumed to be unfair would be minimum harmonisation measures allowing Member States to provide a higher level of consumer protection under national law.

Whilst I welcome a number of amendments which improve and clarify the text, I do have strong concerns about some of the amendments the European Parliament Committees have made to the text. In my view a number of the amendments would place unreasonable burdens on business, and although intended to increase consumer protection, would in fact have the effect of causing inconvenience to consumers (for example a ban on concluding contracts by telephone) and raise prices as the costs of the increased burdens and restrictions would ultimately be passed on to consumers. I am also concerned that certain amendments relating to distance selling, for example additional information requirements for digital products and the requirement for all information to be provided on a durable medium before the conclusion of the contract, do not reflect the realities of the market and consumer expectations and could have a detrimental impact on this sector and may damage growth in the market for digital products.

I remain supportive of the deletion of the chapters on general information requirements, sale of goods and unfair contract terms. Even as a minimum harmonisation measure the drafting of the chapter on sale of goods would threaten UK consumer protections as it is not certain we would be able to retain the right to reject in its current form or amend it as we may wish to in future. Full harmonisation of the rules on unfair contract terms as currently drafted would reduce consumer protection for financial services contracts and the proposed rules for on-premises information requirements would, in my view, create confusion and uncertainty and place unreasonable burdens on UK businesses. The plenary vote in the European Parliament is currently scheduled for early March, where I understand that MEPs will be asked to vote on key amendments to their text, but not take their official first reading vote on the whole report. This would mean that a first reading deal with the Council would still be possible. However, I think that it is now unlikely that the Directive will be agreed at

first reading given the divergence between the positions of the Council and the European Parliament, but if a first reading deal cannot be reached I am hopeful for a relatively quick agreement at second reading. This depends a great deal on whether the European Parliament agrees to the deletion of the chapters on on-premises information requirements, sale of goods and unfair contract terms. I remain optimistic that. we can agree the Directive by the end of this year.

My officials and I are continuing to liaise with MEPs to discuss UK priorities and concerns. We will of course also have a further opportunity to influence the final content of the Directive when the Council comes to consider the European Parliament's view.

The Government will only support a package of measures which achieves an appropriate balance between the interests of consumers and business.
1 March 2011

Letter from the Chair to Edward Davey

Thank you for your letter of 1 March informing us of recent developments in the Council and European Parliament on the draft Directive on consumer rights.

We note that the European Parliament is likely to vote on amendments to the draft Directive at its forthcoming plenary session. We should be grateful if you would provide a further progress report on the prospects for reaching an agreement on the scope and content of the draft Directive in light of the outcome of the plenary vote.
9 March 2011

UK RESPONSE TO THE COMMISSION CONSULTATION ON THE SINGLE MARKET ACT

Letter from Edward Davey to the Chair

I thought you would wish to know that the Government published on Monday its response to the consultation on the Commission Communication *Towards* a *Single Market Act- For* a *highly competitive social market economy* (COM(2010)608).

The response sets out the UK position regarding the Single Market Act. In it we argue that reforms to the single market should be seen as part of a wider strategy to encourage growth across the EU and we recommend that the Commission takes specific action in three key areas.

Firstly, we argue that the Single Market Act should prioritise actions that will improve the single market in services. The service economy accounts for 78% of the EU's economic output and has been the source of all net job creation in recent years. Improving the single market in services would, therefore, enhance the competitiveness of the EU's economies as a whole.

Secondly, we recommend that the Single Market Act be used to prioritise actions that will modernise the single market. Specifically, we call on the Commission to take action to enable businesses and citizens to take advantage of advances in digital technology; support the development of a single market in energy and low carbon; facilitate innovation; and help businesses trying to trade with the rest of the world.

Finally, we argue that the Single Market Act should prioritise actions that support SME growth and ensure that the single market works for citizens when they make use of it. "SMEs are a major contributor to the EU's economies, representing 99.8% of EU enterprises and employing almost 90 million people, over two thirds of the EU's private
sector workforce. However, current evidence demonstrates that they find access to the single market blocked, which then inhibits their growth. Citizens also find that access to the single market is blocked and are increasingly reliant on informal problem solving mechanism to overcome the barriers they encounter.
4 March 2011

Letter from the Chair to Edward Davey

Thank you for your letter of 4 March drawing to our attention the Government's response to the Commission's consultation exercise on this document, and highlighting the priorities identified by the UK.

We note that these two documents have been placed in the Library of the House, and, in view of this, and the very full Report which we ourselves produced on 8 December 2010, we do not think any further action is called for on our part. We were, however, grateful for this update.
9 March 2011

17367/08: Proposal for a recast Directive of the European Parliament and of the Council on Waste Electrical and Electronic Equipment (WEEE)

Letter from Mark Prisk to the Chair

Clearance of this proposal was given on 15 July 2009 by a decision without debate (Standing Order No. 119(11)) where the House expressed support for the Government's aim to work with the European Commission and other Member States to reform the existing Directive.

Negotiations have continued in Brussels on a first reading of the Commission's proposals throughout the remainder of 2009 and all of 201 0, so I thought it would be appropriate to update the Committee on progress. The Hungarian Presidency aims to conclude the first reading with political agreement this month, although this could be delayed until the Council meeting in June.

Discussions have focussed on a number of key issues, namely the scope or coverage of the Directive, the basis and overall ambition of the Member State collection targets, the role and definition of a 'producer', and the monitoring requirements for the shipment of used equipment overseas for either reuse or recycling. I will take each of these issues in turn.

On scope, the Commission proposed maintaining a 'closed' scope defined by the ten broad categories of equipment in the current Directive. A large number of Member States however now favour 'open' scope that would apply to all electrical and electronic equipment. Various positions and compromise proposals have been put forward, but it looks as if a move to a more 'open' scope might achieve political agreement, but some five or six years after the adoption of the recast and, more importantly, with some very broad exclusions (such as means of transport, for example). This follows the model agreed under the first reading deal secured under the associated recast of the Restriction of Hazardous Substances in electrical and electronic equipment (RoHS) Directive in November last year.

On the overall collection target, the original Directive foresaw a move to a new target based on the tonnage of equipment placed on each Member State market. The Commission has proposed a target of 65% by weight as an average of the equipment placed on the market over the previous two years, to be reached by 2016. All Member States have questioned the pragmatism and practicality of this target; the UK currently recycles around 38% of electrical equipment if the current collection rates were to be recorded in this way. Current compromise proposals from the Council Working Groups suggest that the 65% target should be phased in on a longer timescale (probably 2020) with an interim target of 40 or 45% by 2016.

The role and definition of a 'producer' has been the most pronounced example of a difference in the views expressed by Member States and those held by the Commission. The Commission proposed an EU-wide definition of a producer, which would mean that those placing equipment on any or all Member State markets would only be required to register in one. Information would then be sent by that Member State to the others to account for the waste arising elsewhere. The Member States have been unanimous in their opposition to this, citing its impracticality and the loophole it creates for unscrupulous producers to avoid responsibility or financial obligations. This would drive up the costs for properly registered producers and, as a consequence, the consumers of such equipment.

It is likely that the Member States will reach political agreement in unanimity and without the Commission's

approval, which will leave further debate on this issue to the second reading.

Finally there is the question of the monitoring requirements for the shipment of used equipment overseas for either reuse or recycling. These requirements have been proposed to address and minimise the amounts of waste electrical equipment being illegally shipped and dumped in parts of Asia and Africa - a practice universally condemned by all Member State Governments and equipment producers, and in contravention of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. I am pleased to report that there has been significant progress on agreeing a text within the recast Directive addressing this issue and this should be finalised without further problems.

I hope that this update helps to keep the Committee informed of the latest developments and I will write again when further progress is made.
8th March 2011

Letter from the Chair to Mark Prisk

Thank you for your letter of 8 March, alerting us to the possibility that the Hungarian Presidency is seeking to achieve political agreement this month, and identifying the main outstanding issues on this proposal.

If we understand the position correctly, the area mostly likely to give rise to difficulty is the scope of the proposal, where - as you point out - there does seem to be something of a parallel with the changes made to a related proposal recasting the Directive on use of hazardous substances in electrical and electronic equipment, about which I wrote to you on 2 February.

We note that you will keep us updated on subsequent developments, and, although the proposal has of course been cleared by virtue of the debate in European Committee in July 2009, we would expect any information you provide to include an indication of the likely impact on the expected costs and benefits if the proposal were to be amended in the ways you anticipate, particularly as regards its scope.
16 March 2011

17367/08: Proposal for a recast Directive of the European Parliament and of the Council on Waste Electrical and Electronic Equipment (WEEE)

Letter from Mark Prisk to the Chair

Thank you for your letter of 16 March, sent in reply to mine of 8 March.

I can now inform the Committee that political agreement on a Hungarian Presidency compromise text was reached at the Environment Council meeting held on 14 March and this concluded the first reading of the Commission's 2008 proposals.

The following was agreed in respect of the key issues that I outlined in my earlier letter.

On scope, the Council has proposed that a 'closed' scope defined by the ten broad categories of equipment in the current Directive will remain for a further six years after the new Directive enters into force. At that point an 'open' scope defined by five broad categories would be introduced, but this would be accompanied by the introduction of some very broad exclusions for certain types of equipment and would also be subject to the outcome of a review to be undertaken by the Commission no later than four year after the entry into force date.

On the overall collection target, the Council has proposed that the current target of 4kg per head of population should remain for a further four years and then a target of 45% by weight as an average of the equipment placed on the market over the previous three years would be put into place. This would rise to the Commission proposal of a 65% target, but not until a further four years had passed. As with scope, the changes to these targets would be subject to the outcome of Commission reviews on their feasibility three years after the Directive has come into force for the 45% level and seven years for the 65% level.

As I foresaw with my earlier letter, the role and definition of a 'producer' was the issue that divided the Member States and the Commission the most. Here, the Council has proposed rejection of the Commission's proposals for an EU-wide definition and agreed to retain the current national definition. This will mean that producers will continue to be required to register in each Member State where they place equipment on the market. We expect significant further discussion on this issue in the second reading that is now likely to be undertaken in the second half of this year.

Finally, there is the question of the monitoring requirements for the shipment of used equipment overseas for either reuse or recycling. Much progress was made on clarifying the Commission's original text, which will now ensure that the legitimate export of defective equipment for repair under warranty can still take place whilst requirements to address and minimise the amounts of waste electrical equipment being illegally shipped and dumped overseas will be introduced.

I hope that the Committee will find this information useful and I will write again as we approach the second reading negotiations where the concerns of the European Parliament will be examined in greater detail.
1 April 2011

Letter From the Chair to Mark Prisk

Thank you for your letter of 1 April, informing us that the Hungarian Presidency has managed to achieve political agreement in the Council, and identifying the outcome on the main outstanding issues on this proposal.

Whilst it was helpful to have this update, we found it difficult, in the absence of the text in question, to judge the significance of what is now proposed as regards the scope of the measure, and we would welcome further clarification on this. Also, it would useful to know when you will be able to let us have a revised Impact Assessment-a point on which your letter is silent.
5 April 2011

17367/08: Proposal for a recast Directive of the European Parliament and of the Council on Waste Electrical and Electronic Equipment (WEEE)

Letter from Mark Prisk to the Chair

You sought further detail on the issue of scope set out in the political agreement on the Presidency compromise text that was reached at the Environment Council meeting held on 14 March.

In Summary, the Council proposed that a ‘closed’ scope defined by the ten categories of equipment in the current Directive will remain for a further six years after the new Directive enters into force.

At that point an 'open' scope defined by five broad categories would be introduced, but this would be accompanied by the introduction of some very broad exclusions for certain types of equipment and would also be subject to the outcome of a review to be undertaken by the Commission no later than four years after the entry into force. The five categories proposed after six years are:

• Temperature exchange equipment
• Screens, monitors and equipment containing screens having a surface greater than 100cm2
• Lamps
• Large equipment (one length 50cm or more)
• Small equipment (no length more than 50cm)

The latter two categories are defined as including certain types of equipment currently within the scope of the existing directive, but do not exclude other types of equipment from falling into those categories - hence a recognition that the agreed text does propose a move to "open scope". However, specific additional exclusions would apply to:

• Equipment designed to be sent into space
• large scale fixed installations
• large scale stationary industrial tools
• means of transport for persons or goods excluding electric two wheeled vehicles which are not type approved
• non road mobile machinery made available exclusively for professional use
• equipment specifically designed solely for the purpose of R&D only made available on a business to business basis
• medical devices and in vitro diagnostic medical devices, where such devices are expected to be infected prior to end of life, and active implantable medical devices

Scope will also be limited by the definition of electrical and electronic equipment (EEE) in the Directive. The proposed recitals recognise a need for this definition to provide greater clarity on the definition of EEE whilst recognising that in the meantime Member States should continue to apply "relevant national measures and current established practices".

My officials will produce an updated impact assessment. I will send this to you once it has been approved by the Reducing Regulation Committee, which may not be until July.
14 April 2011

Letter from the Chair to Mark Prisk

Thank you for your letter of 14 April, elaborating further on the scope of the recast Directive.

We now look forward to receiving the updated Impact Assessment, which we have noted may not be available until July.
4 May 2011

***118115/10*: Proposal for a Council Decision authorising enhanced cooperation in the area of creation of unitary patent protection**

Letter from Baroness Wilcox to the Chair

Thank you for your letter of 3 March. I am writing to give you advance warning of the possibility that the Government may need to override parliamentary scrutiny on a proposal for a Council Decision authorising enhanced cooperation in the area of creation of unitary patent protection.

The UK strongly supports the creation of a European patent system that delivers real benefits for business. We see enhanced cooperation as the only viable way forward and it would be extremely regrettable if we were unable to support the authorising Decision at the Competitiveness Council on 10 March.

In my previous letter of 16 February I explained that we had sought and obtained assurances that the UK could withdraw from the request for enhanced cooperation and we are confident of our ability to withdraw. The option of postponing the Council Decision was not available to us although we did discuss the possibility of postponing the decision with the Commission, other Member States and the Presidency. Reopening the text of the decision itself was also not a viable option given the risk of further amendment and debate which may have held up progress.

Although the Treaty is not explicit about Member States' right to withdraw from enhanced cooperation, the Council Legal Service has advised, in writing, that any Member State participating in enhanced cooperation would be entitled to withdraw as long as no substantive act to the enhanced cooperation has been adopted. In

addition, a written Commission declaration to be made at the same time as the authorisation decision confirms that the Commission is also of the view that Member States are entitled to withdraw.

We consider that the combination of the view of the Council Legal Service and the declaration to be made in writing by the Commission does give us sufficient assurance to withdraw after the authorising decision so long as the two implementing regulations (on the unitary patent and the language arrangements) have not been agreed. At our request, the Presidency has agreed that the final decisions on the two implementing regulations, one of which requires unanimity in the
Council, will be taken together. If the regulations are taken for decision as the Hungarian Presidency plan at the 30 May Competitiveness Council then they will need to be presented by the Commission by the end of March.

We will take a final view on UK participation when we have fully considered the implications of the ECJ Opinion and I will ensure that the ECJ Opinion is deposited and an Explanatory Memorandum submitted in sufficient time for the Committee to scrutinise before any final decisions on implementing regulations are taken. The Committee will of course have the opportunity to scrutinise the draft regulations in the usual way once they are issued by the Commission.

We shall of course take the necessary steps so that your Committee may clear the current document as soon as possible. In the meantime, I hope that you will accept my explanation.
09 March 2011

Letter from the Chair to Baroness Wilcox

Thank you for your letter of 9 March.

We understand that, on 10 March, the Government voted in favour of the adoption of the above-mentioned draft Decision, in breach of this Committee's scrutiny reserve resolution.

The Committee takes such breaches very seriously and invites you to give evidence to it to explain why you chose to ignore the scrutiny reserve, and, more generally, to explain the Government's approach to the adoption of this Decision.

We would be grateful if you would deposit the Opinion of the Court of Justice, together with an Explanatory Memorandum as soon as possible, as this will be relevant to the questions the Committee will ask.

The Committee's secretariat will be in touch with your office to fix a convenient time.
17 March 2011

118115/10: Proposal for a Council Decision authorising enhanced cooperation in the area of creation of unitary patent protection

Letter from Baroness Wilcox to the Chair

Thank you for your letter of 17 March. As you are aware, I attended the EU Competitiveness Council on 10 March and, along with 24 other Member States, I voted in favour of adopting the Decision to authorise enhanced cooperation, I am now writing to you to explain the reasons why the Government considered *it* was necessary to override the Parliamentary scrutiny reservation on this occasion. I also wish to provide some further information you requested in relation to the Explanatory Memorandum on the ECJ Opinion I deposited on 30 March 2011 regarding the Government's approach to the adoption of the Council Decision.

The UK has been at the forefront of calls for the creation of a European patent system that supports business and economic growth. The unitary patent and an effective single patent court are key elements of such a system. By participating in enhanced cooperation, the OK is able to influence the negotiations and ensure the creation of a business-friendly system.

When I attended the Competitiveness Council, I took the opportunity to repeat our desire to agree the unitary patent as a package with an effective patent court. In particular the role of the ECJ in any patent court arrangement was a particular concern. Any extension of ECJ powers in resolving patent disputes would be opposed by industry, and may require primary legislation (under the EU Bill) in the UK. This is why UK sought and secured assurances of our ability to withdraw from enhanced cooperation should the opinion of the ECJ be unfavourable. As I mentioned in my letter of 9 March 2011 these assurances included a declaration in the Council minutes from the Commission.

Unfortunately, the ECJ opinion on the compatibility of the draft International Agreement on the patent court did not issue until two days before the Council authorising Decision. While the ECJ Opinion concluded that the current draft agreement was incompatible with EU law it did not say that extending the powers of the ECJ under Article 262 TFEU was the only solution. In fact the Opinion stated that extending ECJ powers was not the only conceivable way of creating a unified patent court. Therefore the Government took the view that the ECJ Opinion did not prevent the UK from agreeing the Council Decision on 10 March.

The Hungarian Presidency had originally planned to agree implementing legislation at the Competitiveness Council on 30 May. This would have required the Commission to have proposed implementing legislation on the unitary patent and the language regime by the end of March. That did not happen and I understand that the Commission is expected to make substantive proposals on implementing legislation later this month. As a result the Council working group discussion planned for April has been postponed. The delay in issuing the Commission's proposals also means that it is highly unlikely that Member States will be in a position to take a decision on the implementing regulations at the Competitiveness Council on 30 May because they will have been given insufficient time to consider the proposals. The agenda items for Competitiveness Councils are set by the Presidency and the Commission.

The Government has been considering the implications of the ECJ opinion. I understand the Commission intends to suggest amendments to the draft agreement later this month, which they believe will resolve the incompatibility raised by the ECJ. While we do not yet know the details of the amendments we support efforts to amend the current international agreement. Should it prove difficult to amend the current draft international agreement to make it compatible with EU law alternative options may be considered.

I would be happy to answer further questions as to the reasons why I decided to override scrutiny on this occasion when I appear before the Committee on 11 May 2011. I shall also ensure that the draft proposals for implementing legislation for the unitary patent and language regime are deposited with the Committee in due course.
13 April 2011

Letter from the Chair to Baroness Wilcox

Thank you for your letter of 13 April. The issues you raise can be discussed more fully when you give evidence to us.
11 May 2011

Doc 9224/11: Proposal for a Regulation of the European Parliament and of the Council implementing enhanced cooperation in the area of the creation of unitary patent protection

Doc 9226/11: Proposal for a Regulation of the Council implementing enhanced cooperation in the ,area of the creation of unitary patent protection with regards to the applicable translation arrangements

Letter from Baroness Wilcox to the Chair

Thank you for your recent consideration of the draft Regulations for the unitary patent and language regime. I understand that both Regulations have been retained under scrutiny. I am writing to provide an update on recent developments on this issue.

Since the Explanatory Memoranda were submitted on 5 May, both Regulations have been discussed in detail in Brussels and amendments proposed. During those discussions, we impressed upon the Hungarian Presidency the importance of ensuring that enough time was allowed for Parliamentary scrutiny of the draft Regulations. Consequently, the Presidency did not put forward the Regulations for agreement at the 30 May Competitiveness Council. Instead, a round table debate on the two implementing Regulations and on a Commission non-paper on creating a unified patent litigation system was held. Ed Davey (Minister for Employment Relations, Consumer and Postal Affairs, Department for Business Innovation and Skills) represented the UK.

The Council discussions were conducted on the basis of the amended Regulations which are contained in Council Document 10629111 and on a non-paper concerning the creation of a unified patent litigation system ("the Court") contained in Council Document 10630111. I have included both Council Documents with this letter for your consideration.

Unitary patent Regulation (Council Document 10629/11)

As I stated in the Explanatory Memorandum of 5 May (9224/11), the UK requested the insertion of a provision that the Regulation would not come in to force until an agreement on the Court was in force. Our request was echoed by several other Member States and I am pleased to say that Article 22 of the unitary patent Regulation has been amended to re-instate the link between the patent and the Court so that the patent Regulation and the translations Regulation only apply once the unitary patent litigation system has been set up.

Other amendments to the draft Regulation have been made to resolve several technical issued raised by the UK and other Member States. Our major concern about the power delegated to the Commission to set fees and decide their distribution is shared by the vast majority of the Council and the relevant article (12a) has been amended. The amendment ensures that the power to set fees is held by the participating Member States.

Languages Regulation (Council Document 10629/11)

The debate at the 30 May Council showed that the linguistic regime for the patent was not contentious and all Member States could accept the text of the languages Regulation. Only two substantial amendments have been proposed. Firstly, to mirror that **in** the other Regulation, a change has been proposed to Article 7 to clearly link the coming in to force of the languages Regulation with the establishment of the Court, as for the patent regulation. Secondly, the options for applicants when translating their patents during the transition period have been extended to include Spanish and Italian.

Unified patent litigation system (Council Document 10630/11)

The Commission presented a non-paper setting out options for a litigation system that would overcome the incompatibility with EU law identified by the Court of Justice of the European Union (ECJ) in its Opinion (1/09). The Commission considered three options: conferral of exclusive jurisdiction on patent litigation upon the ECJ; jurisdiction resting with national courts with judgements delivered for the whole territory of participating Member States as in the Community Trade Marks system; or conferral of exclusive jurisdiction upon an independent court established by the participating Member States.

The Commission's paper recommends their third option of amending the current draft international agreement to meet the concerns of the ECJ. The Commission's proposal is compatible with the Government's preferred way forward on this issue, notably as it does not extend the power of the ECJ. The proposal would create a specialised patent court by International Agreement amongst the EU Member States participating in enhanced cooperation. This court would take decisions relating to infringement and validity of the unitary patent and also for European bundle patents in force in the participating states.

At the Competitiveness Council, there was wide spread support amongst the participating Member States (including the UK) for the Commission's proposal to the use the current draft International Agreement as a starting point for creating a unified patent litigation. Of course, the detail will need to be resolved and we will want to ensure a legally watertight system.

Enhanced cooperation

Spain and Italy remain opposed to the use of enhanced cooperation and they have challenged the legality of the Council Decision of 10 March before the ECJ under Article 263 TFEU. They argue that the Decision was discriminatory, as it was counter to EU law and as it did not treat Spain and Italy equally with all other Member States. This action does not mean that progress on the patent Regulations must stop as commencing proceedings under Article 263 does not suspend the contested measure pending judgement. If the action were successful, the ECJ would declare the Decision void and all actions based on the Decision would also be deemed void. It is the view of the Government that the enhanced cooperation Decision of 10 March complies with the all the requirements set out in the Treaties. I shall of course keep you updated on any progress made in this matter.

Next Steps

Based on the Council discussions on 30 May the Presidency concluded that the two Regulations could be subject of a future agreement and they have called an extraordinary Council on 27 June with the objective of reaching General Approaches on both Regulations. In due course we expect to receive an amended draft of the international agreement on the court system based on the principles in the Commission's non-paper.

I would be most grateful if the Committee could give consideration to the latest drafts of the Regulations and developments in relation to the court system so that we may proceed to agreement on General Approaches at the 27 June Competitiveness Council. I shall of course take the necessary steps so that your Committee may clear the current documents as soon as possible and I would be delighted to answer any further questions you may have, either at the evidence session on 22 June or in writing if that is more convenient.
7 June 2011

Letter from the Chair to Baroness Wilcox

Thank you for your letter of 7 June updating us on the negotiation of the above two Regulations, and asking us to waive the scrutiny reserve for the purposes of a general approach being agreed on both of them at the extraordinary Competitiveness Council on 27 June.

We are pleased to note that the negotiations on the above two Regulations appear to have gone the Government's way, one of the most important features being, in our opinion, that neither will come into force unless there is agreement on a unified patent court that is compatible with EU law. The amendments you outline meet the concerns we had raised, and so we are content to lift the scrutiny reserve under paragraph 3(b) of the scrutiny reserve resolution, as requested.

Turning to the proposal for a unified patent court, the Commission's non-paper recommends that the court should have jurisdiction in disputes relating to both the proposed EU and the existing European patent; that it should be able to request a preliminary ruling; and that, in order to comply with the Court of Justice's Opinion, its jurisdiction should be limited to EU Member States, so excluding non-EU Member States which are party to the European Patent Convention (EPC).

In order to comply with two further stipulations in the Opinion, the Commission says that:

> "Considering that the unified patent court would be a court set up by Member States only, it would seem possible for the Commission to start infringement proceedings against all Member States jointly in cases where the unified patent court violated Union law. Similarly, in such a case, the rules on financial liability to make good damages caused to individuals as a result of a breach of Union law also seem to be applicable to all Member States jointly.

We would be grateful if you could provide us with a more detailed analysis of the implications of the Commission's recommended approach to creating a unified patent court. Of particular interest to us is how the

proposal may affect the operation of the European patent in non-EU EPC States, and how likely you think it is that the approach outlined in the quotation above will meet the Court's concerns.
22 June 2011

Doc 9224/11 Proposal for a Regulation of the European Parliament and of the Council implementing enhanced cooperation in the area of the creation of unitary patent protection (32700)

Doc 9226/11 Proposal for a Regulation of the European Parliament and of the Council implementing enhanced cooperation in the area of the creation of unitary patent protection with regards to the applicable translation arrangement (32701)

Letter from Baroness Wilcox to the Chair

Thank you for your letter of 22 June in which you granted a waiver on the scrutiny reserve for the two Regulations listed above. This allowed me to support agreement of General Approaches, along with the 24 other participating Member States, at the extraordinary Competitiveness Council on 27 June. I attach for your information the relevant Presidency document which contains the latest texts of the two Regulations.

In your letter you referred to a Commission non-paper which recommends an approach to creating a unified patent court. You asked if I could provide a more detailed analysis of the Commission's proposal especially on how the proposal may affect the operation of the European patent in non-EU Contracting States of the European Patent Convention (EPC).

The Commission recommends that the unified patent court have exclusive jurisdiction over infringement and validity for both the unitary European Union patent and for (bundle) European patents granted under the EPC. Participation in the proposed agreement would only be open to Member States of the European Union. EU Member States not taking part in the unitary patent would be free to participate in the court agreement but the court would only have jurisdiction over (bundle) European Patents in respect of those countries.

The operation of European bundle patents in respect of non-EU EPC Contracting States would be unaffected. Disputes relating to (bundle) European patents in such States would still be heard by the relevant national court as is current practice.

This system will still provide significant savings to UK businesses because they would not need to litigate their patents in as many different national courts as they do now.

You also asked how likely it is that the Commission's recommended approach will meet the concerns of the Court of Justice of the European Union (ECJ). In its opinion of 8 March the ECJ (the 'Court') objected to conferring jurisdiction on a court created by international agreement which would deprive Member States' courts of their task of implementing Union law or referring questions to the Court of Justice for a preliminary ruling. The Court distinguished this from the Benelux Court of Justice as "a court common to a number of Member States, situated, consequently, within the judicial system of the European Union, its decisions are subject to mechanisms capable of ensuring the full effectiveness of the rules of the European Union".

The Commission recommends addressing this point by limiting participation in the new patent court agreement to EU Member States. As you note in your letter, the Commission goes on to state that as consequence it would seem possible for infringement proceedings then to be initiated against all Member States jointly were the unified patent court to violate Union law and for any financial liability arising to be applicable to all Member States jointly.

By limiting participation in the proposed agreement to EU Member States we are satisfied that the Commission's recommended approach addresses the issues raised by ECJ Opinion 1/09. This approach received support from the vast majority of Member States when it was discussed at the Competitiveness Council on 30 May 2011, so I am confident it will be adopted.

The Presidency has produced a revised draft agreement for the Court system based on the Commission's recommendations. This draft has now been published and I will deposit the new draft agreement and submit an Explanatory Memorandum accordingly.

UK industry has not yet had an opportunity to comment on the detail of the new draft agreement. The Government regularly consults UK stakeholders on developments with both the unitary patent and unified patent court negotiations and we will continue to engage positively with industry.
7 July 2011

Letter from the Chair to Baroness Wilcox

Thank you for your letter of 7 July. The Committee took note of your replies and looks forward to deposit of the draft agreement establishing the unified patent court. We would be grateful if the accompanying Explanatory Memorandum could address in sufficient detail how the draft complies with the Opinion of the Court of Justice.
19 July 2011

The Anti-Counterfeiting Trade Agreement (ACTA)

Letter from Baroness Wilcox to the Chair

I am writing to inform you of negotiations on the multi-lateral ACTA treaty that the EU and UK participated in with other World Trade Organisation partners, including the United States, Japan and Canada.

ACTA will not create new intellectual property rights, laws, or criminal offences in the UK and EU but will provide an international framework that strengthens international enforcement in areas of intellectual property (IP). In November 2010, the Prime Minister identified IP as a driver of innovation and growth and enforcement of IP rights is being considered in the No-10 Review of IP and Growth; IP has been similarly identified as an area of importance by the EU.

As is common practice in trade negotiations, ACTA was negotiated in confidence and negotiations were completed in December 2010. I will, of course, update the Committee once the text and the proposals have become available for national scrutiny and will prepare the usual explanatory memorandum using the normal parliamentary procedures. However, in the meantime I am taking this opportunity to update you on recent progress.

The European Commission is preparing its proposal to the Council, the European Parliament and Member State Parliaments; further details on the content of this proposal are expected in April 2011. But it is expected that the recommendation will be for the EU and its Member States to sign and ratify the treaty. In areas where Member States retain competence, they will decide whether to accede in their own right.
25 January 2011

8502/10 & 8523/10: EU-South Korea Free Trade Agreement (FTA) and 6307/10: Bilateral Safeguard Clause

Letter from Edward Davey to the Chair

I am writing to inform you of the status of the EU-South Korea FTA and the bilateral safeguard clause which was negotiated alongside the Agreement.

The FTA was signed by Member States on 16 September 2010 and by the South Korean Trade Minister, the European Commission and Belgian Presidency on 6 October 2010.

The European Council, European Commission and the European Parliament reached agreement on an amended bilateral safeguard clause on 15 December 2010. The clause is attached, with the agreed amendments in bold. We believe this will provide effective protection without undermining the benefits of the FTA.

The European Parliament gave its consent to both the FTA and the amended safeguard clause on 17 February 2011. The clause now needs Council approval in April, followed by signature and adoption in May. With this completed, the FTA and the bilateral safeguard clause will provisionally enter into force on 1 July 2011.
24 March 2011

Letter from the Chair to Edward Davey

Thank you for your letter of 24 March informing us of the latest state of play on the ED-South Korea Free Trade Agreement, and on the draft Regulation giving legal effect within the ED to the safeguard clause.

We were grateful for this update, and have noted the position.
30 March 2011

11953/10: TOWARDS A COMPREHENSIVE EUROPEAN INTERNATIONAL INVESTMENT POLICY

Letter from Edward Davey to the Chair

I refer to the Committee's report (31784) of 15 September 2010 regarding the above proposal. I apologise for not writing sooner, this is due to the continuous changes to the European Parliament's timetable. I am now in a position to provide you with an update on the progress of this Regulation.

As mentioned in my explanatory memorandum, my concerns on this regulation, are centred on the scope of the powers the draft Regulation would give the Commission to remove authorisation to maintain in force existing bilateral agreements, and in particular the fact that this would threaten the legal security investors enjoy under existing agreements. The Committee noted the Government's reservations over this point and proposed to hold the regulation under scrutiny, pending further information.

I have actively advanced this view in Europe to build consensus amongst Member States and to explain our position to the Commission. On 25 October 2010, this was reflected in Council conclusions, which stated: "*In accordance with Article 351 of the Treaty on the Functioning of the European Union, bilateral investment agreements concluded by Member States should continue to afford protection and legal security to investors till they are replaced by at least equally effective EU agreements*."

In the European Parliament, the International Trade (INTA) Committee's initial report was less favourable, with Rapporteur Schlyter (Green, Sweden) proposing amendments that would have caused all Member State IPPAs to lapse after eight years. These amendments were opposed by other parties, including the EPP, ECR and ALDE. On 12 April INTA voted by 15 votes to 13 in favour of the regulation with a number of compromise amendments. On 10 May, these amendments were endorsed by the plenary of the European Parliament, with 345 votes in favour, 246 votes against and 16 abstentions (see attached document). These amendments, whilst a step in the right direction compared to both the Commission's initial proposal and Schlyter's first report, still fall significantly short of satisfying the UK's concerns and the Council Conclusions of 25 October.

The Council must now respond to this and we are in the progress of agreeing a Council negotiating position, in order to reach agreement with the European Parliament at Second Reading. We will be clear that the UK is

ready and willing to support the Hungarian Presidency in discussions with the Parliament, although we are not prepared to accept an agreement at any cost.
8 June 2011

Letter from the Chair to Edward Davey

Thank you for letter of 8 June, reporting on the latest developments on this proposal, and in particular the extent to which the position adopted by the European Parliament differs from that taken by the Council.

We have noted that the Government is willing to support the Presidency in reaching a second reading deal, but is not prepared to accept an agreement at any price. We do not think it would be sensible for us to make a further Report to the House until the situation has been clarified further, and we would therefore be grateful if you could keep us informed of any significant developments. In the meantime, we will continue to hold the proposal under scrutiny.
22 June 2011

11953/10: TOWARDS A COMPREHENSIVE EUROPEAN INTERNATIONAL INVESTMENT POLICY

Letter from Edward Davey to the Chair

Thank you for your letter dated 22 June 2011.

I am now in a position to provide you with an update on the progress of this Regulation.

Member State delegations have given broad support to a compromise proposal from the Presidency which reflects the UK's concerns, as set out in my previous correspondence and my Explanatory Memorandum. COREPER has mandated the Presidency on this basis to embark on trilogue discussions between the Council (represented by the Presidency), Commission and European Parliament. These trilogue discussions have now started with the aim of reaching an early Second Reading agreement.
26 September 2011

Letter from the Chair to Edward Davey

Thank you for letter of 26 September, reporting on the latest developments on this proposal, and in particular the fact that the Presidency has been mandated to embark on trilogue discussions with the Commission and European Parliament.

As with your previous update on 22 June, we do not think it would be sensible for us to make a further Report to the House until the situation has been clarified further, and we would therefore be grateful if you could keep us informed of any significant developments. In the meantime, we will continue to hold the proposal under scrutiny.
19 October 2011

EU Consultation Paper on the use of Alternative Dispute Resolution (ADR) as a means to resolve disputes related to commercial transactions and practices in the European Union

Letter from Edward Davey to the Chair

I am writing to inform you of the UK Government response to the European Commission consultation on the use of ADR to resolve disputes related to commercial transactions and practices in the EU.

Earlier this year, the Commission launched a consultation on how to increase the use of ADR in business-to-consumer disputes. The consultation sought views on how to raise awareness of consumers about

the availability of ADR, how to encourage the participation of industry in ADR schemes and how best to fund ADR that is free or at least very cheap for consumers. The UK Government response of 17 March 2011, which accompanies this letter, addresses these points.

I welcome the Commission's interest in how ADR within the EU could be improved and we should engage fully in the process and collaborate with the Commission and other Member States as this work is taken forward. I have a particular interest in dispute resolution for on-line sales as evidence suggests that consumer confidence is weaker in this area. An efficient EU-wide dispute resolution mechanism has the potential to benefit UK consumers shopping cross-border and UK businesses trading into other Member States.

Evidence suggests that one of the factors discouraging consumers from purchasing goods and services cross-border is uncertainty about what to do or who to turn to if they experience a problem with a foreign trader. The Commission's purpose in promoting increased use of ADR is to encourage active participation of consumers in the internal market thereby boosting cross-border trade. Consumers would have confidence that they will have access to cheap, simple and quick solutions to resolve disputes.

ADR, through arbitration, mediation or ombudsmen schemes, provides a way to resolve a dispute as an alternative to courts or tribunals. ADR has been promoted for many years in the UK as the best way to resolve disputes, and ADR schemes can help to drive up business standards and alleviate burdens on the judicial system.

Although I support the Commission's objectives in promoting use of ADR in business-to- consumer disputes, my response to the consultation makes clear that where effective national schemes already exist, EU action must not damage their operation. Furthermore, any EU measures should:

i. be limited to cross-border disputes between EU businesses and their customers; and

ii. not, implicitly or explicitly, lead to Member States having to change their internal judicial systems;

And any proposal that would affect UK judicial systems would be subject to the JHA protocol 21 'opt in' procedure.

Our reaction to any eventual Commission proposal in this area will depend on a robust assessment of costs and benefits and of the EU's legal competence to take the proposed action.

The Commission do not put forward any proposals in their consultation but a legislative proposal from the Commission is scheduled for late 2011. I will carefully consider any proposals put forward by the Commission and write again in due course.
23 March 2011

Letter from the Chair to Edward Davey

Thank you for letter of 23 March and please excuse the delay in responding.

The Committee was gratified to note the robust approach the Government has taken in its response to the Commission's consultation on the use of ADR, which it fully supports.
22 June 2011

7229/09: Proposal for a Directive of the European Parliament and of the Council amending Council Directive 78/660/EEC on the annual accounts of certain types of companies as regards micro-entities.

Letter from Edward Davey to the Chair

I refer to the Competitiveness Council's meeting of 30 May 2011, which passed a compromise package to partially exempt micro-entities from the 4th Company Law Directive.

An explanatory Memorandum (EM) on this subject was submitted on 17 March 2009, and was cleared by your Committee. In my letter dated 11 August 2010 I updated the Committee outlining amendments to the original proposal.

The 4th Company Law Directive, which establishes minimum requirements for the annual accounts of companies and certain partnerships, forms the basis for financial reporting by small and medium enterprises (SMEs) in the EU. Currently, micro-entities are mostly subject to the same rules as larger companies. Those rules put a burden on them which is disproportionate. The package agreed at the Competitiveness Council would allow Member States the option to simplify how micro-entities draw up annual accounts. This would enable the UK to harmonise tax and accounting rules for these company, significantly reducing administrative and compliance burdens on them.

An earlier proposal was approved by the European Parliament in February 2010 but was blocked by a minority of Member States in the Council. The subsequent package is a compromise that is designed to balance the concerns of all parties. It aims to relieve burdens for micro-entities and provides a balance between simplification and transparency. The key amendments agreed by the Competitiveness Council are:
A change in the definition of micro-entity with a company defined as a micro-entity if it does not exceed the limits of two out of three criteria:

- a balance sheet of €250,000;
- a net turnover of €500,000; and
- an average number of 10 employees

Partial exemption rather that full exemption from the 4th Company Law Directive has been agreed. This still offers significant simplification as it allows Member States to exempt micro-entities from:

a) presenting accruals in accounts
b) drawing up notes to the accounts on the condition that 2 key notes are disclosed at the foot of the balance sheet. These are:

i. the amount of advances and credits granted to members of the administrative, managerial and supervisory bodies with indications of the interest rates, main conditions and amounts repaid as well as commitments entered into on their behalf by way of guarantees of any kind, with an indication of the total for each category;
ii. Information referred to in Article 22 (2) of Directive 77/91/EEC concerning the acquisition by a company of its own shares is given in the notes to their accounts.

c) Drawing up an annual report in accordance with the Directive, providing the information specified in (b) is disclosed.
d) Publication of annual accounts provided balance sheet information is filed in accordance with national law with at least one competent authority. If the competent authority is not the register, it will have to provide the information to the register.

In addition, Member States may permit micro-entities to:

a) draw up a limited and simplified balance sheet
b) draw up a limited and simplified profit and loss account

The package agreed at the Competitiveness Council will now transfer to the European Parliament for its second reading.
27 June 2011

Letter from the Chair to Edward Davey

Thank you for your letter of 27 June, drawing to our attention a number of amendments agreed by the Council prior to the European Parliament's Second Reading.

We were grateful for this information, but we note that the UK supports the changes made, and we do not think these affect the clearance given in March 2009, or that they need to be reported to the House.
6 July 2011

Decision of the council and of the representatives of the Member States, meeting within the Council, authorising the Commission to open negotiations for establishing a Cooperation Agreement on Satellite Navigation between the European Union and its Member States and the Federative Republic of Brazil.

Decision of the council and of the representatives of the Member States, meeting within the Council, authorising the Commission to open negotiations for establishing a Cooperation Agreement on Satellite Navigation between the European Union and its Member States and the Federative Republic of Chile.

Letter from David Willetts to the Chair

I am writing to inform you of the agreement of negotiating mandates for the European Commission to negotiate two new co-operation agreements with the Governments of Brazil and Chile respectively on behalf of the European Union and its Member States. The mandates cover scientific and industrial co-operation with these countries in the fields of satellite navigation, positioning and timing. A similar co-operation agreement was recently concluded with the Kingdom of Norway and an explanatory memorandum (6618/11) was submitted by the Department for Transport.

Once negotiations conclude, the proposed co-operation agreements will be put before Council for decision. The proposed agreements will be subject to the normal scrutiny procedures including the submission of explanatory memoranda to the Committee.

Responsibility for the European satellite navigation programmes (Galileo and EGNOS) transferred to my Department from the Department for Transport on 1 April 2011. My officials will monitor the negotiations as they occur and will seek to update the Committees on any significant developments during the course of negotiations.
30 June 2011

Letter from the Chair to David Willetts

Thank you for your letter of 30 June informing us of the negotiating mandates for cooperation agreements with Brazil and Chile in relation to Galileo. The Committee looks forward to scrutinising in due course draft Decisions to endorse any agreement reached.
6 July 2011

10963/10: Proposed Regulation implementing UN Firearms Protocol

Letter from Mark Prisk to the Chair

Further to my letter of 21 March, I wanted to write to you to update you on the negotiations in Brussels on this proposed Regulation.

These discussions have progressed at a rapid pace in recent weeks as the Presidency seized the opportunity to conclude discussions on this dossier and chalk it up as a success. I regret that, because of the fast moving situation, that this is the first opportunity to alert you to this situation. "Trilogue" discussions with the Commission and European Parliament have now been successful in achieving a First Reading deal despite a lot of points of substance being unclear at the outset of these recent discussions. This was then taken to

Coreper on the 29th June where it was adopted as an item without discussion. The UK maintained our Parliamentary Scrutiny reserve. This will now go to the ECOFIN Council on 12 July. The final discussions on this dossier took place right up to the COREPER deadline with meetings involving both the "Trilogue" and Member States on 28th June. The number of technical points that remained outstanding meant it was a difficult call to judge what would happen in the endgame. However, our judgement of the final text received later that day, following those discussions, was deemed to be satisfactory in respect of no major negative impact for the UK to enable us to take our position at COREPER but subject to scrutiny clearance.

I will write to you again shortly to provide your Committee with our final analysis on the outcome on the negotiations when we have had time to look at this in more detail and to provide you with an impact assessment to inform your scrutiny decision.
4 July 2011

Letter from the Chair to Mark Prisk

Thank you for your letter of 4 July letting us know that, following recent trilogue discussions between the Council, Commission and European Parliament, a first reading deal has been reached, which was adopted by COREPER on 29 June, and is to go to the Council on 12 July.

We note that the text in question has no negative impact for the UK, and that this enabled you to take a position in COREPER, subject to scrutiny clearance, but it was not clear to us whether you were asking us now to release the document from scrutiny. If that is the case, I have to say that we do not feel able to do so on the basis of the information in your letter, which is in very general terms, and does not (for example) address how the various points of concern highlighted in our Report of 5 April have been resolved. In addition, of course, we still await an Impact Assessment, which we note you will be providing when you have carried out your "final analysis" of the negotiations.

In view of this, we are continuing to hold the proposal under scrutiny.
6 July 2011

Docs 12190/11 & 12193/11 (COM(2011) 379 &380): Proposals for Decisions on the signing and conclusion on behalf of the European Union of the Anti-Counterfeiting Trade Agreement between the European Union and its Member States, Australia, Canada, Japan, the Republic of Korea, the United Mexican States, the Kingdom of Morocco, New Zealand, the Republic of Singapore, the Swiss Confederation and the United States of America

Letter from Baroness Wilcox to the Chair

I would like to thank you for considering the above proposals at your meeting on 7 September, and your decision to release the documents from scrutiny.

At the time of my original letter to you, we were considering whether Article 114 of the Treaty on the Functioning of the European Union (TFEU) needed to be cited in addition to Article 207 TFE . We are now satisfied that in so far as Article 114 TFEU may be considered relevant, it is no more than ancillary to Article 207 TFEU in relation to the ACTA agreement.

I was pleased to note that he Explanatory Memoranda attached to the European Commission's proposals m de a statement about the division of competence between the EU and the Member States in the field of criminal enforcement, following the clear preferences of the Member States including the UK. In particular, the Commission has not pr posed exercising shared competence in the field of criminal sanctions, which I very much welcome. The House of Lords Select Committee on the European Union has requested an EU declaration of competence in addition. My officials will discuss this issue with the European Commission. We understand the Presidency is keen to secure agreement on the Council decision for EU signature shortly, to allow signature with other international partners.
5 October 2011

Letter from the Chair to Baroness Wilcox

Thank you for your letter of 7 September.

We have noted the position which has emerged on the legal base, as well as that on the division of competence between and EU and Member States. However, whilst we were grateful for this further information, we do not think it needs affect our earlier clearance of these two documents.
12 October 2011

12044/11 **PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND THE COUNCIL ON THE APPLICATION OF CERTAIN GUIDELINES IN THE FIELD OF OFFICIALLY SUPPORTED EXPORT CREDITS**

Letter from Lord Green to the Chair

I refer to the Explanatory Memorandum (EM) on the above proposal submitted to Parliament on 8 August 2011. The Committee considered and cleared this item from scrutiny at its meeting of 7 September 2011. The Committee considered that the documents were not legally or politically important.

The purpose of this letter is to inform you that the above proposal was adopted by the European Parliament (EP) on 13 September 2011 at the first reading.

The EP adopted a single compromise amendment that corresponds to what was agreed between the Council, the European Parliament and the Commission, and which ought therefore to be acceptable to the Council. Consequently, once the Legal/Linguistic Experts have examined the text, the Council should be in a position to adopt the legislative act.
24 October 2011

Letter from the Chair to Lord Green

Thank you for your letter of 24 October, letting us know that a compromise amendment, which is likely to be acceptable to the Council, has been adopted by the European Parliament.

We have noted this development, but do not think it need affect our earlier clearance of this proposal
2 November 2011

DOC *10668/11:* PROPOSAL FOR A REGULATION ENTRUSTING CERTAIN INTELLECTUAL PROPERTY EN'FORCEMENT RELATED ACTIVITIES TO THE OFFICE OF HARMONISATION IN THE INTERNAL MARKET

Letter from Baroness Wilcox to the Chair

I am writing to update you on the progress of negotiations on the proposed regulation transferring the EU Observatory on Counterfeiting and Piracy to the Office of Harmonisation in the Internal market (Trade Marks and Designs). An Explanatory Memorandum was submitted on this proposal in June 2011 (Doc 10668/11).

I am also attaching a new draft text provided by the Presidency on 20 October. We expect a further text to be issued within the next week which I will provide once it is available.

Discussions on this Regulation have been relatively slow until the past few weeks, with only two half day Council Working Groups arranged since the return from the summer break. Most member states are supportive of the proposal although some have raised limited concerns about the provisions on data within the Regulation, the arrangements for meetings of the Observatory and the need for improved governance arrangements.

In view of the limited issues being raised by member states and the emerging positive views from the European Parliament, the Presidency have announced a new timetable for this work with a view to a first

reading deal in early January 2012. They are seeking to complete discussions in the Council on the text and commence informal dialogue between the Council, the Parliament and the Commission at the end of November 2011. Clearly this is an ambitious timetable and one we may not be able to meet but as this is a QMV process and there is broad support our ability to influence this timetable is limited.

Turning to the Regulation, while we support the proposed transfer of the Observatory to OHIM, which should provide an additional important tool to aid the protection of IP rights, we have been seeking changes. These changes are intended to address the concerns that I set out in my original Explanatory Memorandum and to generally improve the text. There has been limited substantive comment or debate from member states on the proposal which has meant that the UK has had to take a fairly proactive role to make sure that our key issues are understood and to influence its content. The UK scrutiny position has however been made clear during those discussions. In particular our efforts have focused on:

• ensuring that OHIM's role and its relationship to the work being carried out by member states, industry and others is clear;

• establishing a clear governance framework to ensure that OHIM's activities are planned, well targeted and deliver value for money;

• preventing the imposition of mandatory data provisions on member states. As you will see from the new text released by the Presidency on 20 October some progress has been made within Council in these areas, although there is more work to be done. On the issue of data, my officials anticipate that further changes will be made to Article 5 in the next draft which will make it clear that member states are not obliged to provide data. I still want to see some further changes on governance, in particular on approval and on prioritisation of activities and resources and my officials are continuing to work with the Council and Presidency to secure improvements to the text.
2 November 2011

Letter from the Chair to Baroness Wilcox

Thank you for your letter of 7 September. The Committee was grateful to receive this update.

You mention that a further revised text is expected sometime soon. When this is circulated, can I ask you to deposit it so that we can report it to the House, and clear the previous deposited text from scrutiny? The further text should also be accompanied by a more detailed explanation of the significant changes that have been agreed since the Committee last reported and why each is acceptable to the Government, whether in the form of a Supplementary Explanatory Memorandum or further letter.
9 November 2011

13635/11: PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE EUROPEAN COUNCIL ON ADMINISTRATIVE COOPERATION THROUGH THE INTERNAL MARKET INFORMATION SYSTEM ('THE IMI REGULATION')

Letter from Edward Davey to the Chair

I refer to the Committee's report (33097) of 12 October regarding the above proposal. I apologise for not writing sooner; this is due to the negotiations timetable of the Council working groups. I am now in a position to provide you with an update on the progress of the negotiations of this draft Regulation.

As mentioned in the Explanatory Memorandum, my concerns on this Regulation are centred on the process of the expansion of the IMI and ensuring there is a sound data protection framework which this Regulation aims to create. The Committee noted the Government's reservations over these points and proposed to hold the Regulation under scrutiny, pending further information.

My policy team has actively advanced our views in the Competitiveness Council working groups to build consensus amongst Member States and to explain our position to the Commission. These concerns were reflected in interventions and drafting proposals passed to the Presidency and Commission during the 11 and 21 October Competitiveness Council working group meetings.

During the negotiations we have been seeking agreement over the drafting of Article 4 which regulates the delegation to the Commission of the power to move items of legislation listed in Annex II to Annex I and thus expand the IMI into these other Single Market legislative areas. The Government is content with the IMI expansion into these areas listed in Annex II and with the delegation to the Commission of the decision to make the transfer. However, we remain concerned to ensure that the expansion should meet necessity and proportionality test. We believe that in accordance with the Common Understanding between the European Parliament, Council and Commission on delegated powers, there should be prior consultation with Member States and that national experts are able to advise on exercise of the delegated powers. In this regard we are pressing for the adoption of the acts in Annex II to be preceded by a pilot project where this is considered necessary by national experts as well as the Commission.

In terms of the expansion of IMI beyond the legislation listed in Annex II, this can only be affected by amendment of the Regulation through the co-decision process. The delegated powers of the Commission are not exercisable beyond expanding the'! IMI to legislation listed in Annex II.

The Polish Presidency must now gather all drafting proposals and present the redrafted text of the Regulation on the 24 November working group meeting. We are working closely with other Member States, including Germany and France who have similar concerns, to come up with a common position.
1st November 2011

Letter from the Chair to Edward Davey

Thank you for your letter of 1 November informing us of recent developments in negotiations on the draft Regulation.

With regard to the proposed delegation of powers to the Commission, we note that Article 4 of the draft Regulation already makes provision for pilot projects to be carried out before a final decision on extending the IMI is taken. We should therefore be grateful if you could tell us whether the Government is seeking an amendment to Article 4 to require the Commission to undertake a pilot project where national experts consider it necessary, or whether the Government is content to rely on the process of consultation and cooperation set out in the Common Understanding in order to achieve this goal.

We also look forward to hearing what progress has been made on the data protection elements of the draft Regulation which you highlighted in your Explanatory Memorandum. Meanwhile, the draft Regulation remains under scrutiny.
23 November 2011

16337/11: PROPOSAL FOR A COUNCIL DECISION ON A EUROPEAN UNION POSITION CONCERNING THE DECISION BY THE WTO GENERAL COUNCIL ON THE EXTENSION OF THE WTO WAIVER IN ORDER TO IMPLEMENT THE EU AUTONOMOUS TRADE PREFERENTIAL REGIME FOR THE WESTERN BALKANS

Letter from Edward Davey to the Chair

I am writing to give you advance warning that the Government may need to override parliamentary scrutiny on a proposal Council Decision on a European Union position concerning the decision by the WTO General Council on the extension of the WTO waiver in order to implement the EU autonomous trade preferential regime for the Western Balkans.

In 2000 the Government strongly welcomed the granting of trade preferences to the countries of the Western Balkans as a means of helping to enhance the region's economic and political stability as part of the European Union's Stabilisation and Association Process and supported the extension of the trade measures until 31 December 2015.

As the EM explains, to provide preferential treatment to the Western Balkans without having to extend the same preferential treatment to other Members of the WTO, in October, the EU presented a request for the extension of the waiver from the provisions General Agreement on Tariffs and Trade (GAD) 1994 Article 1:1 until 31 December 2016. The European Council's position is for the Commission to express approval of the waiver extension in the General Council of the WTO.

Up to now we have expressed a scrutiny reservation on the proposal but we need to take a position at ECOFIN on 30 November, as we have been strongly supportive of the proposal at all stages it would be reputationally damaging for the UK to abstain. The UK position has already been cleared by the Lords, I hope that you will accept my explanation.
29 November 2011

Letter from the Chair to Edward Davey

Thank you for your letter of 29 November, letting us know that, in view of the WTO timetable involved, you have come under pressure to agree to this document, and that, in view of the Government's strong support for the measures in question, you would if necessary feel bound to do so, notwithstanding the absence of formal scrutiny clearance.

This is just to let you know that we have no objection to this course of action.
7 December 2011

16337/11: PROPOSAL FOR A COUNCIL DECISION ON A EUROPEAN UNION POSITION CONCERNING THE DECISION BY THE WTO GENERAL COUNCIL ON THE EXTENSION OF THE WTO WAIVER IN ORDER TO IMPLEMENT THE EU AUTONOMOUS TRADE PREFERENTIAL REGIME FOR THE WESTERN BALKANS

Letter from Edward Davey to the Chair

Many thanks for your letter of 7 December confirming that you had no objection to me overriding scrutiny on the above proposal. I am writing to confirm that on 20 November, at ECOFIN, the UK voted in favour of the proposal for Council Decision on a European Union position concerning the decision by the WTO General Council on the extension of the WTO waiver in order to implement the EU autonomous trade preferential regime for the Western Balkans. I am now writing to you to explain the reasons why the Government considered it was necessary to override the

Parliamentary scrutiny reserve on this occasion.

In 2000 the Government strongly welcomed the granting of trade preferences to the countries of the Western Balkans as a means of helping to enhance the region's economic and political stability as part of the European Union's Stabilisation and Association Process and supported the extension of the trade measures until 31 December 2015.

We had been strongly supportive of this proposal to extend the waiver from the provisions General Agreement on Tariffs and Trade (GATT) 1994 Article 1:1, for the Western Balkans, until 31 December 2016, at all stages and so it would have been reputationally damaging for the UK to abstain at ECOFIN. The UK position had already been cleared by the Lords. I hope that you will accept my explanation.

Letter from the Chair to Edward Davey

Thank you for your letter of 29 November, letting us know that, in view of the WTO timetable involved, you have come under pressure to agree to this document, and that, in view of the Government's strong support for the measures in question, you would if necessary feel bound to do so, notwithstanding the absence of formal scrutiny clearance.

This is just to let you know that we have no objection to this course of action.
7 December 2011

DOC 11533/11 (33058) DRAFT AGREEMENT ON A UNIFIED PATENT COURT AND DRAFT STATUTE

Letter from Baroness Wilcox to the Chair

I am writing to update you on discussion between Ministers at the Competitiveness Council on Monday, and to ask for the Committee's consideration of this issue at the next available opportunity before 22 December. I am also responding to the points raised by the Committee at your meeting of 7 December.

In relation to the Committee's comments about the scrutiny process, it would not be usual practice for the Government to submit a document like that in 11533/11 because it concerns a draft international agreement between states acting in an inter-governmental capacity and is not based on any provision of the EU Treaties. However I appreciated that it was of interest to the Committee in relation to their scrutiny of the patent regulations and the Council decision on enhanced cooperation, and it was for that reason that I arranged for the deposit of the document and an Explanatory Memorandum.

The negotiations between states on this Agreement are not open to the public, so I cannot give full details of the package currently on the table. As I indicated in my letter of 2 December, the Polish Presidency is seeking consensus on political aspects of a compromise package relating to the draft Court agreement. There was no question of signing of the Agreement itself by Ministers at the Competitiveness Council of 5 December. But it was only at a very late stage that it became clear what the Presidency was expecting on 5 December, and there were further changes on the day of the meeting itself.

After a series of bilateral meetings on 5 December throughout the day, the Presidency presented a compromise package which in certain key aspects, including the location of the seat of the central division, was not satisfactory to the UK and at least one other Member State. We are continuing in bilateral discussions with the Presidency. They may convene another meeting of Ministers, if necessary, before the proposed initialling ceremony planned for 22 December. It is not yet clear how this relates to the diplomatic conference and signing planned by the Danish presidency for June 2012.

Details of the compromise package are not publicly available, but they do reflect some progress made in relation to the concerns raised by our stakeholders. If remaining aspects can be resolved satisfactorily either through bilateral discussions or in a Ministerial meeting, then the UK would want to be in a position to join the initialling ceremony on 22 December without any breach of the Parliamentary scrutiny reserve resolution.

Turning to the specific points raised by the Committee:

(a) separation of jurisdiction on validity and infringement: the possibility of separation (bifurcation) continues to be an essential element for some of the states involved in negotiations on the Agreement, but this is mitigated by a number of options which allow the regional or local division to hear such actions together, or remit both to the central division. Further instances have been proposed for starting infringement actions at the central division.

(b) costs of the UPC: ensuring that arrangements are cost-effective will help reduce the level of user fees necessary, and current drafts require hosting states to pay facilities costs. Other costs will be shared by states according to a scale to be determined, at least until such time as the UPC is self-financing.

(c) language of proceedings: while some simplification is possible, it is also necessary to ensure that defendants, in particular, are able to use an EU language with which they are familiar. Where parties agree, the language of proceedings may be changed; alternatively there is a possibility for either party to petition the President to change the language of proceedings to the language of grant. Some aspects of the linguistic regime, eg publication of judgments, could be dealt with in the Rules of Procedure.

(d) quality of judges: there is a very clear understanding among negotiating parties that training will need to be provided to ensure there are enough experienced judges once the UPC starts up, and one state has already bid to host a training centre for judges.

I would also like to address in particular the comments that have been submitted to you on behalf of the Chartered Institute of Patent Agents, which is one of the bodies represented on the European patent reform consultation group. They had seven points:

a) Deletion of Articles 6 – 8 from the patent regulation: there is little support within the Council or among the EU institutions, but we have continued to raise the issue.

b) non-exclusive jurisdiction: while some states argue this would delay consistency of the system by limiting the number of cases reaching the UPC, there is currently an opt-out from the UPC for patentees and applicants until the end of an extended transition period.

c) German property law: we understand the key concern is German employee inventions law, but that relates to the question of entitlement which is addressed by the European Patent Convention. Otherwise German property law applies in the case of proprietors having no domicile or place of business in the EU – this is already the situation for other IP rights.

d) Transitional provisions: these have been extended in latest drafts, including the opt-out

e) Supplementary Protection Certificates: we have sought assurances from the European Commission that any necessary legislation will be brought forward in good time.

f) Rights for European Patent Attorneys before the UPC: this is already in the agreement

g) Legal Professional Privilege: this can be further clarified in the Rules of Procedure to be developed under the Danish Presidency.

You will appreciate that I cannot be more specific about the Government's position on these issues while we are still engaged in negotiations with other states on the overall compromise package. However I hope that the information I have provided is sufficient to allow the Committee to complete its scrutiny of the draft agreement.

I would add that the Agreement will only enter into force upon ratification by a minimum number of states to be decided, possibly 13, and I understand that the procedures set out in section 20 of the Constitutional Reform and Governance Act 2010 will apply after signature and before ratification.
9 December 2011

Letter from the Chair to Baroness Wilcox

Thank you for your letter of 9 December. The Committee was grateful to receive this response.

We have passed your letter to the Chartered Institute of Patent Attorneys and asked that they provide any further comments in time for us to consider the draft agreement again, at our final meeting before the Christmas recess which takes place on Tuesday. Given the strength of the views expressed by CIPA, we would be grateful for their comments before deciding whether to release the document from scrutiny.
14 December 2011

16748/11: Draft Council Decision on the position to be adopted by the European Union within the relevant instances of the World Trade Organisation on the accession of the Russian Federation to the World Trade Organisation

16785/11: Draft Council Decision on the position to be adopted by the European Union within the relevant instances of the World Trade Organisation on the accession of Samoa to the World Trade Organisation

16809/11: Draft Council Decision on the signing, on behalf of the European Union, and provisional application of, the Agreement in the form of an exchange of letters between the European Union and the Government of the Russian federation regarding the preservation of commitments on trade in services contained in the current EU-Russia Partnership and Cooperation Agreement

16812/11: Draft Council Decision on the conclusion, on behalf of the European Union, of the Agreement in the form of an exchange of letters between the European Union and the Government of the Russian federation regarding the preservation of commitments on trade in services contained in the current EU Russia Partnership and Cooperation Agreement

18102/11: Proposal for a Council Decision establishing the position to be taken by the European Union within the Ministerial Conference of the World Trade Organization (WTO) as regards a request for granting a waiver in order to give preferential treatment to services and service suppliers of Least Developed Countries

Letter from Edward Davey to the Chair

I am writing to give you advance warning that the Government will need to override Parliamentary Scrutiny on the above proposed Council Decisions. The first and second refer to Council Decisions on the position regarding the accessions of Russia and Samoa to the WTO and the third and fourth refer to Council Decisions on the signing, provisional application and conclusion of a side-agreement on the preservation of commitments in trade in services contained in the current EU-Russia Partnership and Cooperation Agreement. These four documents were discussed at the Committee on 7 December 2011 when, although they were clearly welcome on policy grounds, they did not pass scrutiny because of the UK's intention to exercise its Mode 4 opt-in rights under title V.

The UK has strongly supported both accessions for several years, the Prime Minister made his support for the Russian accession very clear on his visit to Moscow in September. It is particularly important that the accessions are agreed in time for the WTO Ministerial Conference on 15 December. This is a difficult time for the WTO with the failure to reach agreement on the Doha round. Adding new members, particularly one the size of Russia, will be a good sign that the WTO remains at the centre of global trade. For these reasons we feel a scrutiny override is necessary to allow us to support the proposals at the Trade FAC on 14 December.

I am also giving you advance warning that we will over-ride Parliamentary Scrutiny on the fifth proposed decision listed above, establishing the position to be taken by the EU at the WTO Ministerial on agreeing a waiver to allow for the granting of preferential access in trade in services for service suppliers from Least Developed Countries.

We only received the Commission's proposal last Tuesday (6 December) and did not have the time necessary to submit an Explanatory Memorandum for the Committee's consideration. Rather than submit the EM to you one day and then send you this letter the next, I have enclosed a copy of the relevant EM with this letter as covering explanation.

The proposal will allow the EU to join the consensus which has emerged very recently that the forthcoming WTO Ministerial should agree a waiver from the Most Favoured Nation provision in the General Agreement on Trade in Services for Least Developed Countries (LDCs). This means that Members will be able to grant preferential access to their markets in services to those WTO Members which are also LDCs without at the same time being required to grant that same access to all other WTO Members.

This measure is very much in line with our trade and development policy but the speed of developments from the end of November onwards took us and many other WTO Members by surprise. Although negotiations had been under way for some years on the possibility of agreeing a waiver, those negotiations had stalled until late November when the Norwegian Chair of the group of WTO Members looking into this issue proposed a Decision for the forthcoming Ministerial. Consensus was reached rapidly and unexpectedly easily at official (Ambassadorial) level on a text at the meeting of the Special Session of the Council for Trade in Services on the 28 November. Subsequently, the Commission has made a proposal for a Council Decision to allow the EU to join this consensus. This proposal (dated 5 December) will need to be agreed before the WTO Ministerial in order to allow the EU to take a position. This means we will need to agree the proposal at the forthcoming meeting of the FAC on 14 December.

It is the speed of developments in Geneva and the late presentation of the proposal by the Commission which has necessitated this over-ride.

I hope that you will accept my explanations.
13 December 2011

Letter from the Chair to Edward Davey

Thank you for your letter of 13 December, letting us know that there will be a scrutiny over-ride on these five documents.

This likelihood of this in the case of the four documents arising from the accession to the WTO of Russia and Samoa had of course been anticipated in our Report of 7 December, and was thus not unexpected, but it was nevertheless helpful to have had this confirmation, which we have referred to in a brief chapter for the Report which we agreed at our meeting today. We also considered today the document on the WTO waiver in favour of the Least Developed Countries, and we cleared this as not warranting a substantive Report, noting the reasons for the over-ride in this case.
20 December 2011

15249111: Draft Regulation of the European Parliament and the Council on specific provisions concerning the European Regional Development Fund and the Investment for growth and jobs goal and repealing Regulation (EC) No 108012006

15253111: Draft Regulation of the European Parliament and the Council on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal

Letter from Mark Prisk to the Chair

Thank you for copies of the Committee's reports concerning the EM on Council document number 15249111 (33219), on the Commission's proposal for a Regulation on the European Regional Development Fund (ERDF), and the EM on Council document number 15253111 (33225), on the Commission's proposal for a Regulation on the contribution of ERDF to the European territorial cooperation (ETC) goal.

On the ERDF proposal, you asked me why the EM indicates that the ordinary legislative procedure applies in this case. I am grateful to the Committee for raising the question of the legislative procedure applicable in this case. It is an important question but one which, I am afraid, does not have a straightforward answer. As you point out in your report, Article 178 TFEU requires the ordinary legislative procedure. However, Article 349 TFEU provides the option for either the special

legislative procedure or a non-legislative procedure. I understand that the choice is left to the European Commission in its proposal, and subsequently to the Council in its examination of the proposal, as to whether to make it a legislative or non-legislative procedure.

However, the Commission has opted for the ordinary legislative procedure for this' proposal (as set out in the introductory wording to the recitals to the proposal) rather than the special or non-legislative procedure. My officials will ask the Commission to explain its reasoning in relation to the appropriate procedure to be used in the case of this dual legal base. Once my officials have received a response I will update the Committee with this information.

On the proposal regarding ETC, you asked about the different approach to legal bases between this proposal (considered in EM *12523/11),* and the one on the ERDF. The Committee notes that the ETC proposal makes specific financial provision for the EU's outermost regions but does not cite Article 349 TFEU, whereas the ERDF proposal does cite Article 349 TFEU in addition to Article 178 TFEU.

There is indeed a question as to whether the specific references in the ETC proposal relating to budget allocation for the outermost regions fall within the scope of "conditions of access to structural funds" to which Article 349 TFEU refers. My officials will pursue the question with the Commission and ask whether it considered citing Article 349 TFEU as a second legal base in that proposal. Again, I will update the Committee when I have received a response.

Thank you again for raising these important questions in your reports. I look forward to updating you with more information following my officials' discussions with the Commission.
19 December 2011

Letter from the Chair to Mark Prisk

Thank you for your letter of 19 December 2011 concerning the Commission's choice of legal base for these draft Regulations and the appropriate decision making procedures. We note that your officials will be asking the Commission to provide a more detailed explanation of its reasons for proposing a dual legal base – Articles 178 and 349 TFEU – for one of the draft Regulations but not the other and for determining that the ordinary legislative procedure should apply in both cases. We look forward to receiving a further update from you in light of the Commission's explanation. Meanwhile, the draft Regulations remain under scrutiny.
11 January 2012

11300/11: EUROPEAN COMMISSION PACKAGE ON STANDARDISATION: UPDATE ON THE NEGOTIATION OF THE PROPOSED REGULATION

Letter from David Willetts to the Chair

As you are aware, Council Working Group negotiations have started on the Commission's proposals to update and streamline the three existing Directives concerning the European Standardisation system into one Regulation. You asked that I keep the European Scrutiny Committee informed of the progress of these negotiations.

Areas of concern

As I reported to you in the summer, the UK's main concerns centre on how the proposed Regulation will affect the overall level of the Commission's involvement in the function of the European standardisation system. Some proposals in the draft might also reduce the influence of Member States.

The UK is also concerned that any measures introduced to increase the speed and responsiveness of European standardisation do not compromise the quality of the standards produced, e.g. in recognising ICT technical specifications. The UK has built strong support amongst Member States for these positions and we will continue to work to ensure a positive outcome for the UK.

Progress of negotiations

Five meetings of the European Council's Working Group negotiating the proposals have been held. The UK, working closely with other Member States, has taken a leading role in influencing the debate and building strong common lines on our key concerns and helping to build a strong Council voice.

The first Working Group meeting in July introduced the Commission's proposals and enabled Member States to present initial views on the draft Regulation and Standardisation Package as a whole. The three subsequent meetings have explored the proposed regulation in detail, giving Member-States the opportunity to propose amendments to the text.

The European Parliament will also begin its consideration of the draft Regulation shortly. The Internal Market Committee (IMCO) will be leading but the Industry, Research and Energy Committee (ITRE) will also be contributing views. A public hearing was held on 23 November with a review of the draft in late January. The amended Regulation will be considered at the end of February, with a vote of the Internal Market Committee (IMCO) scheduled for late March. A final plenary vote is expected to take place in May. The UK has briefed MEPs on its areas of concern.

One more meeting of the Working Group has taken place, on 28 November, under the current Polish Presidency. This began the process of reconciling proposed amendments with the main text of the Regulation – this will continue in January under the Danish Presidency. I will provide more details of this process when I next provide you with an update. The UK continues to work closely with many other Member States, in particular France and Germany to ensure that our concerns are met in the final document.

Key issues in negotiations

The key issues that have so far emerged in the negotiation centre on the balance of responsibilities between the Commission, the Member States and the European and National Standards Bodies. In particular many Member States have raised issues of transparency and the enabling of appropriate participation of all stakeholders especially in respect of the annual work programme and the recognition of ICT technical specifications.

Member States also seek clarity on the Commission's competencies and delegating powers under the Regulation and clearer definitions of particular terms, including 'technical specification', 'standard', 'national standards body' and 'harmonised standard'.

The UK will work to ensure that the final text reflects the majority position of Member States on these issues. The UK is also strongly supported by Member States in this objective.
The UK and our allies in other Member States are also concerned to ensure that the Regulation maintains the voluntary, market-led and outcome focused nature of standardisation and that the final text is in line with the national delegation principle, of full stakeholder participation at national and European level. We will work to ensure the Regulation drives towards simplification and reduction of administrative while expanding the demonstrated economic benefits of standardisation into wider service sectors and supporting development of trade and the single market. The UK will continue to oppose any measures that would have a negative impact on these factors.

I will write with a further update after the European Parliament's first reading of the draft regulation.
21 December 2011

Letter from the Chair to David Willetts

Thank you for your letter of 21 December 2011 informing us of progress made during the Polish Presidency on the changes proposed by the Commission to the EU's existing legislative framework for developing European standards.

We note that the UK has built strong support for its negotiating position. We look forward to receiving a further progress report on negotiations in light of the outcome of the European Parliament's First Reading of the draft Regulation.
18 January 2012

14000111 Decision of the European Parliament and of the Council on the detailed rules for access to the public regulated service offered by the global navigation satellite system established under the Galileo programme

Letter from David Willetts to the Chair

I am writing to update you on progress with this proposed Decision. An Explanatory Memorandum was submitted by the Department for Transport on 04 November 2010 and was cleared by the scrutiny Committees of both Houses. Policy responsibility for the Galileo Programme has now passed from the Department for Transport to the UK Space Agency.

The public regulated service (PRS) is one of five Galileo services. It is a highly encrypted service for Government authorised users. The Decision sets out the high level rules governing access to the PRS.

The Hungarian Presidency has successfully pushed the Commission, Council and Parliament to a first reading deal which was agreed by the European Parliament on 13 September 2011 . Amongst other things, the Decision requires Member States to set up Competent Authorities to agree the users of the service and monitor the manufacture, ownership, export and use of PRS technology. The UK is well placed to deliver early manufacturing capability of PRS technology. A first reading deal means we can push forward with domestic legislation to create this body well before initial capability (known as In Orbit Validation - IOV) of the system is achieved in 2014 - thus
strengthening the UK's competitive position.

The UK has been instrumental in taking the Decision from the original Commission proposal to the legislation that was published in the Official Journal as EU Decision *1104/2011* and came into force on 04 November 2011. Key achievements include;
• Defining the key responsibilities set out in the Decision
• Separating the rules governing manufacture and use of PRS technology
• Differentiating between the manufacture of the PRS security modules and other PRS equipment
• Gaining agreement from Member State experts on the shape and content of the annex which defines the areas covered by the Common Minimum Standards for access to the PRS

The UK has also led work to push the Commission to include commitments to consult and take account of expert opinion when amending technical standards for the PRS by delegated acts. This has led to the inclusion in the Decision of statements attached at A by both the Council and the
Commission. Whilst the statements carry little legal weight, they nonetheless place a significant moral obligation on the Commission to consult and listen to Member States in the preparation and amendment of highly technical standards.

Apart from the addition of the statements, there are no significant changes to the outline set out in EM *14701/10* and the Decision is likely to be agreed in Council.

The committee should also note that a full Impact Assessment into the Decision still needs to be undertaken by the Commission. This was highlighted by the Rt Hon Theresa Villiers MP in the scrutiny debate on 21 March 2011. Whilst this remains outstanding, it is likely that Commission will undertake some form of assessment as part of renegotiating the two key Galileo regulations ahead of the next multi annual financial framework. It may be that the impact of PRS will be considered as part of this assessment. Initial proposals for both these regulations are expected before the end of this year.
11 December 2011

Letter from the Chair to David Willetts

Thank you for your letter of 21 December 2011 about this proposal. The Committee was grateful to you for the information about the final outcome.
11 January 2012

DOC *13003/11*, COM (2011) 427: UK GOVERNMENT RESPONSE TO THE GREEN PAPER ON THE ONLINE DISTRIBUTION OF AUDIOVISUAL WORKS IN THE EUROPEAN UNION: OPPORTUNITIES AND CHALLENGES TOWARDS A DIGITAL SINGLE MARKET

Letter from Baroness Wilcox to the Chair

In the Explanatory Memorandum submitted to Parliament for scrutiny on 1 August 2011 it was highlighted that the Government intended to draft a Government Response to the Commission's public consultation on the above Green Paper to be submitted by to the European Commission by 18 November 2011. The Commission will use the feedback from the consultation to launch a debate on the opportunities and challenges of the online distribution of audio visual works.

As indicated in the Explanatory Memorandum of 1 August I wish to share the Government Response with the Scrutiny Committees and therefore I now have pleasure in submitting the document for your perusal (Annex A).

The UK Government's response has been drafted by the Intellectual Property Office on behalf of BIS in conjunction with the Department for Culture, Media and Sports. The submission takes an overview of the issues and does not seek to answer the individual questions posed in the Green Paper, but focuses on the topics they raise.

The key points raised in the Government response are:
• The Government welcomes the publication of the Green paper as a positive move that opens up a discussion and debate on issues that are important to' stakeholders in the audiovisual sector;

• It would be useful to see sound evidence which demonstrates the nature and scale of pan-European issues relating to the online distribution of audiovisual works;

• The UK would be keen to look at the scope for simplification of copyright licensing insofar as it is needed or is being sought for audiovisual works. In the wake of the Hargreaves Review the UK Government intends to consult on measures to simplify and modernise copyright licensing;

• The UK is interested in developing a flexible scheme that allows access to a wide variety of orphaned copyright works;

• The Country of Origin principle continues to be an important one and requires careful consideration in the light of recent court cases;

• We agree that there is a need to reflect upon whether copyright exceptions should be modernised at EU level to better support innovation and growth;

• Legislation in the area of the preservation of film archives might clear up the legal uncertainty for public interest organisations;

• We would hope that the Green Paper consultation exercise will provide concrete proof of the need for an unwaivable right to remuneration for creators before any changes to the legal framework can be considered;

• Issues of access to creative content and digital technologies by disabled people are important to the UK Government, but there is still significant work to be done at a national and European level to achieve an inclusive society.

The Government Response was submitted to the Commission on 18 November and should be published on the Commission website. I will keep you informed of any significant further developments regarding this matter.
22 November 2011

Letter from the Chair to Baroness Wilcox

Thank you for your letter of 22 November, which summarised the UK's response to the Green Paper.

As we have cleared the Green Paper from scrutiny without asking further questions, we need only hear from you again if and when a further EU document is published by the Commission.
18 January 2012

16748/11: Draft Council Decision on the position to be adopted by the European Union within the relevant instances of the World Trade Organisation on the accession of the Russian Federation to the World Trade Organisation

16785/11: Draft Council Decision on the position to be adopted by the European Union within the relevant instances of the World Trade Organisation on the accession of Samoa to the World Trade Organisation

16809/11: Draft Council Decision on the signing, on behalf of the European Union, and provisional application of, the Agreement in the form of an exchange of letters between the European Union and the Government of the Russian federation regarding the preservation of commitments on trade in services contained in the current EU-Russia Partnership and Cooperation Agreement

18102/11: Proposal for a Council Decision establishing the position to be taken by the European Union within the Ministerial Conference of the World Trade Organization (WTO) as regards a request for granting a waiver in order to give preferential treatment to services and service suppliers of Least Developed Countries

Letter from Edward Davey to the Chair

Further to my letter of 13 December I am writing to confirm that on 14 December, at the Trade Foreign Affairs Council in Geneva, the UK voted in favour of above proposed Council Decisions. I am now writing to you to explain the reasons why the Government considered it was necessary to override the Parliamentary scrutiny reserves on this occasion. I would also like to thank you for the Committee's report of 20 December which gave scrutiny clearance.

The first and second refer to Council Decisions on the position regarding the accessions of Russia and Samoa to the *WTO,* the third refers to a Council Decision on the signing and provisional application of a side-agreement on the preservation of commitments in trade in services contained in the current EU-Russia Partnership and Cooperation Agreement. These documents were discussed at the Committee on 7 December 2011 when, although they were clearly welcome on policy grounds, they did not pass scrutiny because of the UK's intention to exercise its Mode 4 opt-in rights under title V.

The UK has strongly supported both accessions for several years, the Prime Minister made his support for the Russian accession very clear on his visit to Moscow in September. It was particularly important that the accessions were agreed at the WTO Ministerial Conference on 15 December. This is a difficult time for the WTO with the failure to reach agreement on the Doha round. Adding new members, particularly one the size of Russia, was a good sign that the WTO remains at the centre of global trade. For these reasons we felt a scrutiny override was necessary to allow us to support the proposals at the Trade FAC on 14 December. I can also confirm that the UK has exercised its opt-in under Title V in relation to the Decisions concerning the accession of Russia and Samoa to the WTO.

I can also confirm that the UK also voted in favour of proposed decision establishing the position to be taken by the EU at the WTO Ministerial on agreeing a waiver to allow for the granting of preferential access in trade

in services for service suppliers from Least Developed Countries (LDCs). This proposal was received on 6 December so we were unable to submit the Explanatory Memorandum, for your consideration, until 13 December.

The LDC services waiver is very much in line with our trade and development policy but the speed of developments from the end of November onwards took us and many other WTO Members by surprise. Although negotiations had been under way for some years on the possibility of agreeing a waiver, those negotiations had stalled until late-November when the Norwegian Chair of the group of WTO Members looking into this issue proposed a Decision for the forthcoming Ministerial. Consensus was reached rapidly and unexpectedly easily at official (Ambassadorial) level on a text at the meeting of the Special Session of the Council for Trade in Services on the 28 November. Subsequently, the Commission made a proposal for a Council Decision to allow the EU to join this consensus. The proposal (dated 5 December) needed to be agreed before the WTO Ministerial in order to allow the EU to take a position. This meant we had to agree the proposal at the FAC on 14
December.

I hope that you will accept my explanations.
20 December 2011

Letter from the Chair to Edward Davey

Thank you for your letters of 19 and 20 December, confirming that the UK voted in favour of these proposals, and explaining why it felt it was necessary to over-ride the Parliamentary scrutiny reserve in these three instances.

This is just to say that we have noted the position, and are content.
18 January 2012

Letter from Edward Davey to the Chair

EU BUSINESS UNDER THE DANISH PRESIDENCY

The New Year saw the start of the Danish Presidency of the European Council. The Danes are experienced at hosting an EU Presidency and we expect them to be effective. While big issues for the Eurozone continue to dominate, BIS's priority will continue to be promoting the growth agenda. We expect the informal European Council scheduled later this month to focus on measures to promote growth, as will the March European Council. In the Competitiveness Council, Denmark will focus on the Digital Single Market, a key growth priority for the UK.

Other priorities for the Presidency are legislative proposals on the Multi-annual Financial Framework (MFF) related dossiers. The majority of regulations have now been published and have begun the scrutiny process. BIS have two major interests: **Structural and Cohesion Funds** (SCF) and **Horizon 2020** package (Common Strategic Framework for Research and Innovation). The Danes are aiming to secure partial General Approaches for both proposals by June 2012.

In addition, **Galileo**, wider space policy, including handling of the Commission's proposal to place the **Global Monitoring for Environment and Security (GMES**) (a Defra lead) off budget, **COSME** and **ERASMUS** are all likely to be progressed. Progress on the ITER Supplementary Research Programme proposal however, may have to wait until the question of whether it is funded within or without the MFF is resolved. We understand the Commission intend to launch a consultation on the **Common Strategic**

Framework which will set out the key things SCFs should be targeted on to deliver Europe 2020 objectives.

Growth

The Danes will work extensively on priority dossiers that contribute towards the growth agenda. Those with a BIS lead are:

(i) **Procurement Framework Directive**: Cabinet Office lead though BIS has an interest. The February Competitiveness Council will have a ministerial exchange of views on the general framework. No progress will be made on either the reciprocity or concessions instruments until the general framework has been agreed.

(ii) **EU patent**: the two regulations implementing the enhance co-operation (9224/11 and 9226/11) are likely to be adopted as an 'A' point soon after the EP Plenary in February. The Danes are also coordinating negotiations on the unified patent court agreement with a view to reaching consensus.

(iii) **Standardisation**: Work on the draft standardisation regulation is progressing in parallel in the European Parliament and Council. Key issues include speeding up standards development while maintaining quality, supporting the growth agenda and maintaining MS role in implementation of the Regulation and the national delegation principle. UK is keen to ensure an appropriate legitimation process for recognition of ICT technical specifications is put in place and the voluntary, market-led, outcome-focused nature of standardisation is maintained, while enabling all stakeholders to contribute to standards development. There is strong support from other Member States for these positions.

In the European Parliament the review of the Rapporteur's draft report will be on 27 January with amendments produced by 6 Feb. The amended Regulation will be considered 28-29 February, with a vote at IMCO scheduled for late March. A plenary vote is expected to take place in May. The Danes are eager to have the regulation completed by the end of their Presidency and have an intensive programme of working group meetings scheduled to achieve this.

(iv) **Alternative and Online Dispute Resolution (ADR / ODR)**: The aim of the legislative proposals is to improve the functioning of the retail internal market and, more particularly, to enhance redress for consumers. Alternative dispute resolution refers to schemes that are available to help complainants resolve their disputes out of court. The diversity and uneven geographical and sectoral availability of ADR in the EU prevents consumers and business from fully exploiting their potential. Problems with purchased goods or services therefore often go unresolved, meaning that consumers are not obtaining adequate redress. An explanatory memorandum on these proposals was submitted on 15 December 2011 (Council doc nos. 17795/11, 17815/11 and 17968/11). The Presidency is hoping to achieve "general approach" in June 2012 with a view to adoption by the end of 2012.

(v) **Accounting Directive**: The Danes want substantial progress, aiming for a Common Approach at the May Competitiveness Council. The Commission aims to reduce the administrative burden for small companies. Simplifying the preparation of financial statements would make these more comparable, clearer and easier to understand. An explanatory memorandum was issued on 30 November. Your Committee has already considered this proposal and have recommended a debate scheduled for 6 February.

(vi) **Audit**: The Commission published a draft Regulation (16972/11) and an amended Directive (16971/11) which an explanatory memorandum was issued 19 December. The Presidency has planned to hold several working groups meeting with a view to issuing a progress report after the May Competitiveness Council.

In addition, the **Consumer Programme 2014/2020** regulation will commence under the Danish Presidency and a Commission's communication on a new **Consumer Agenda** will be published March / April where there is likely to be a presentation at the May Competitiveness Council or June EPSCO. It is possible the Commission may publish a legislative proposal on **consumer rights** in relation to digital content in the first half of 2012. If this is the case, it is expected the Danes will commence discussion at Working Group.

We expect a communication in February or March on **collective redress** with a proposal to follow towards the end of the year. We think that this will be general in scope but with a focus on consumer and competition issues. Therefore, Ministry of Justice will lead but with a strong BIS interest.

Trade

The biggest focus for the Danes on trade related issues are:

(i) **Free Trade Agreement with Japan**: discussion of the 'scoping exercise' will commence during the Spring and will be included in the March FAC Trade discussion. We strongly support the Presidency's aim to launch negotiations at the EU/Japan summit on 30 June.

(ii) **FTAs with India and Singapore**: The Danes are hoping to reach a political agreement on the EU-India FTA at the EU-India Summit in February, which will be challenging, although tariffs could be agreed at the Summit with the rest of the FTA to follow during 2012; Singapore could be concluded by mid 2012 although some difficult issues remain.

(iii) **EU/US**: the Presidency will be working on the EU-US relationship, where the priority will be making sure the High Level Working Group prepares the ground for the launch of a new initiative in 2013.

(iv) **DCFTAs and European Neighbourhood Policy**: following the approval in December 2011 of negotiating mandates for Deep and Comprehensive Free Trade Agreements with Egypt, Jordan, Morocco and Tunisia, the next step will be scoping missions to assess the readiness of the countries concerned to enter into negotiations. The first of these is likely to be with Tunisia and Morocco.

(v) **Investment agreement:** concluding the regulation establishing the transitional arrangement for Member States' existing bilateral investment agreements. The Presidency wishes to resume informal trilogue talks with the EP in order to reach an early second reading deal. Both European Scrutiny Committees have retained the draft regulation under scrutiny and we will update them as it becomes clear what the outcome of the trilogue will be.

(vi) **Generalised System of Preferences (GSP)**: this proposal has made good progress in securing agreement on the reformed GSP. The Presidency is hoping to considered this item at the Trade FAC, 31 May.

(v) **Trade Omnibus I and II: t**wo proposals to adapt appropriate trade policy decision-making to the post-Lisbon comitology arrangements. The Presidency is hoping to achieve a first reading agreement, though it's touch and go at present.

Smart Regulation

The Presidency will be seeking agreement to Conclusions on Smart Regulation at the February Competitiveness Council. These are likely to endorse the Commission's recent commitments to seek ways of reducing burdens on SMEs and micro-enterprises, and reinforce the importance of involving small businesses in EU policy development and simplification exercises. In addition, they are likely to call on the Commission to follow up its administrative burden reduction programme, which is due to end in 2012, with further efforts to reduce the overall EU regulatory burden.

Employment

The Commission is expected to publish two proposals on **Posted Workers** in February. The Presidency has signalled they will be holding discussions on these with a view to possible general approaches in June. Discussions on the **Pregnant Workers Directive** are currently stalled, it is not expected that there will be any movement or further discussion in Council under the Danish Presidency whilst the European Parliament maintains its current position. European Social Partner negotiations on the **Working Time Directive** are continuing through the Danish Presidency. Social Partners have up to 9 months in which to reach agreement from the date of notification to the Commission that they would negotiate (15 November); while these negotiations are in progress the Council has no role.

Research

The Danes' priorities under the Research agenda relate to the **Horizon 2020** proposals (the successor to the current Framework Programme). These aim is to increase the EU's focus on Research and Innovation by dealing with major societal challenges, strengthening R&D links between academia and industry, investments in research infrastructure and simplifying the delivery of the programme. The Presidency is aiming to achieve a partial general approach by June 2012. There will probably be discussion at the informal Competitiveness Council on 2 February and formal on 20 February. The Presidency will also be aiming political agreement on the **EIT Strategic Innovation Agenda**.

Space

Galileo and **GMES** develops and implements the **EU space industrial policy**. Negotiations are currently in progress on a regulation on the implementation and exploitation of European satellite navigation systems which will refresh the current regulation on Galileo and EGNOS (European Geostationary Navigation Overlay Service) as the programmes move further into the deployment and exploitation phases which will fall under the next multi-financial framework. The Danes are seeking general agreement at Transport Council in June with final agreement being concluded alongside EU budget talks. HMT lead on the talks into the €7897 funding the Commission in requesting for these programmes. The Commission's communication on GMES places it off budget. The Danes are seeking to adopt Council conclusions at the Competitiveness Council in February. These are expected to be short, urging the Commission to bring GMES back on budget (without prejudice to the overall MFF envelope) and to bring forward a regulation soon. Overall responsibility sits with Defra but BIS have a strong interest as we lead on the space component and to drive growth in the downstream sector from exploitation of GMES data**.**

Intellectual Property

Legislative proposals on **orphan works** and the move of the **EU Observatory on the enforcement of IP rights** will progress under the Danes Presidency. An explanatory memorandum on the Observatory (18680/11) was submitted on 13 January for the Committee's consideration. This EM covered the latest compromise text. The European Parliament are expected to vote on the amended regulation in early February and thereafter it is expected as an 'A' point at the Competitiveness Council on 20 February 2012.

The Danes are expecting to launch the Council's consideration of new proposals for **trade mark reform** which are due in late March 2012. This will cover a broad range of issues relating to the Community trade mark and national registration systems, including increased harmonisation of substantive law and OHIM fees.

Education

The Commission has already published its communication on **Erasmus for all** and an explanatory memorandum (17574/11) was issued on 20 December. The Commission proposes to amalgamate

multiple existing programmes in the areas of education, training, youth and sport areas into a new, single programme. The intention is to achieve efficiency gains, reduce administrative costs and burdens and to focus the activities within this new programme on the priorities of the Europe 2020/ Education and Training 2020 strategies. The Danish Presidency hopes to get agreement on the structure of the new programme at the Education Council meeting on 10-11 May.

The Commission has recently published its Draft Joint Report on the implementation of the Strategic Framework for European Cooperation in Education and Training (ET2020). DfT leads though BIS will have an interest. The report will be discussed at the 10 February Education Council.

The Commission's draft proposal for Council Conclusions regarding a benchmark on employability will be negotiated from February-April, in the expectation that it will be adopted by Ministers at the 10-11 May Education Council meeting.

The Commission is expected to publish a draft Recommendation on the validation of informal and non-formal learning, to be negotiated between February and April for adoption again in May Education Council meeting.

Councils

There will be two **Competitiveness Councils** during the Danish Presidency: 20-21 February and 30-31 May, both in Brussels. **Space Council** is likely to be part of the May meeting. An informal Competitiveness Council will also take place on 1-3 February in Copenhagen. There are eight **General and Foreign Affairs Councils** which are led by the Foreign & Commonwealth Office though two are trade related (16 March and 31 May) for which BIS will take forward. There will be two Education Councils: 10 February (DfE likely to lead) and 10-11 May (BIS lead).

I hope you find the above information useful.

Letter from Baroness Wilcox to the Chair

18680/11 - Proposal for a Regulation of the European Parliament and of the Council on entrusting the Office for Harmonisation in the Internal Market (Trade Marks and Designs) with certain tasks related to the protection of intellectual property rights, including the assembling of public and private sector representatives as a European Observatory on Counterfeiting and Piracy - Analysis of the final compromise text with a view to an agreement

Thank you for clearing the above document from scrutiny when you last met in January. Further to my letter of 11 January, I attach, for your information, the Impact Assessment (IA) for the Explanatory Memorandum (EM) which has now been completed.

Additionally, I would like to update you on our response to the House of Lords Select Committee's letter of 26 January. I apologise that I did not provide a version of the amended proposal showing the changes that had been made to the text. It was unfortunate that the document published by the Council Secretariat did not highlight changes from the previous text. Going forward I have asked my officials to ensure, wherever possible, that changes to early text are highlighted to support effective scrutiny in line with the working arrangements agreed with the Committees

February 2012

Letter from Vince Cable to the Chair

14969/10: AUTONOMOUS TRADE PREFERENCES TO PAKISTAN

Further to Edward Davey's letter of 27 June 2011, I am writing to update you with progress on the waiver request in the World Trade Organisation (WTO) for additional autonomous trade preferences for Pakistan, following the devastating floods in 2010.

As you know, the UK has actively lobbied at official and Ministerial level for agreement to the package both internally within the EU and in the WTO so as to obtain a waiver. Last June we informed the Committee that due to the waiver request being blocked in the WTO by a small number of countries including India, the European Commission would be ceasing consultations on the measures.

India withdrew its objection last November and the Commission resumed consultations with the remaining concerned countries. Following these consultations the Commission submitted a revised proposal and consensus was reached at the WTO Council for Trade in Goods on 1 February. The WTO General Council is expected to endorse that decision on 14 February. This requires an EU decision and we expect the EU Presidency to send this to Council shortly before the WTO General Council.

The Committee considered and cleared the original proposal at the end of 2010 (Council doc. No. 14969/10). The revised proposal (Council doc. No. 5910/12) (attached) is not substantially different from the original. It contains tariff rate quotas on 20 of the original 75 product lines and a revised timeline from 1 January 2012 to 31 December 2013.

We believe that, despite the time lapse since the initial request, Pakistan still needs enhanced market access for its reconstruction and long-term development following the floods. As a result securing the waiver would be an extremely positive development. If the waiver is granted as expected, we will then need to reach agreement between Council and the European Parliament on the internal EU Regulation to enact the tariff cuts, at which time we will further update the Committee.

I recognise that the document would normally be subject to a separate EM, but following consultation with the Committee's clerk it was judged appropriate that the issue was covered by an updating letter linked to the earlier proposal which both Committees had cleared and that further updates will be provided as the Regulation moves through the legislative process.

February 2012

Letter from the Chair to Baroness Wilcox

Proposal for a Regulation of the European Parliament and of the Council implementing enhanced cooperation in the area of the creation of unitary patent protection (32700)

Thank you for your letter of 19 January, and for the information it contained.

One of the main concerns stakeholders have expressed in evidence to us on the unitary patent is that Articles 6-8 of this Regulation give jurisdiction to the ECJ. In their view they should not, the ECJ being ill-suited to jurisdiction over patent litigation.

In the course of the Government's evidence last week, you and your officials confirmed that there would be scope to amend Articles 6-8 in negotiations under the Danish Presidency (contradicting the Government's previous stated position).

As your evidence last week was interrupted, I would be grateful if, before your next appearance, you could explain what efforts the Government has made to amend Articles 6-8 in light of stakeholder concerns, and with what success.

8 February 2012

Letter from the Chair to Vince Cable

Autonomous trade preferences for Pakistan (33660) 5910/12

Thank you for your letter of 7 February, providing us with an update on this issue, and in particular drawing to our attention this draft Council Decision.

Like the Government, we were disappointed that earlier Indian opposition seemed to have prevented the introduction of these very necessary preferences for Pakistan, and we were pleased to see that it now looks as though it will be possible after all to introduce a set of measures — albeit somewhat more narrowly drawn — for the period up to the end of 2013. We are therefore content to clear this document on the strength of your letter.

8 February 2012

Letter from Norman Lamb to the Chair

13635/11: PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON ADMINISTRATIVE COOPERATION THROUGH THE INTERNAL MARKET INFORMATION SYSTEM ('THE IMI REGULATION')

I refer to the Committee's report (33097) of 8 February seeking an update on the IMI Regulation which is currently under discussion in the Council working group. We apologise for not responding sooner but we were keen to reflect the latest position as the discussions in working groups are ongoing.

You sought further updates on the data protection and supervision provisions of the draft Regulation, and on the use of IMI to exchange personal data with third countries.

At the working group meeting on 16 February discussions were focused on revised drafting proposed by the Danish Presidency. We noted your remaining concerns on the parts of Regulation defining the data protection framework; however in the new draft our concerns regarding the information exchange with third countries have been addressed. In particular, Article 22 now has a set of conditions which have to be satisfied before exchanging information with third countries. Moreover, a UK proposal to clarify text on with whom exactly the information will be exchanged was adopted.

Regarding other data protection concerns, we are working closely with the Danish presidency to amend the drafting and to ensure that data protection requirements only apply to data held within the IMI system itself. The scope provisions have been amended to this effect.

I hope this addresses your concerns and I will keep you informed on the progress made throughout negotiations.

February 2012

Letter from the Chair to Baroness Wilcox

Proposal for a Regulation of the European Parliament and of the Council implementing enhanced cooperation in the area of the creation of unitary patent protection (32700)

Thank you for your letter of 28 February, for which the Committee was grateful.

We will explore its contents further with you when you give evidence today.

7 March 2012

Letter from the Chair to Norman Lamb

Draft Regulation on the Internal Market Information System

(33097) 13635/11

Thank you for your letter of 27 February informing us of recent developments in negotiations on the draft Regulation.

You tell us that your concerns regarding the use of the Internal Market Information System to exchange personal data with third countries have been addressed because Article 22 now contains a set of prior conditions which must be met before information may be exchanged. You also refer to new text clarifying the parties with whom the information may be exchanged. We note, however, that Article 22 of the Commission's original proposal already includes a set of prior conditions. We assume that these conditions must have been strengthened, but you do not tell us how. Nor do you explain the content of the new wording proposed by the UK to clarify the parties with whom the personal data may be exchanged.

We would therefore be grateful if you could include, in your next update on the progress of negotiations, a more detailed explanation of the changes made to Article 22 and to other provisions of the draft Regulation concerning data protection requirements and supervision arrangements. Meanwhile, the draft Regulation remains under scrutiny.

7 March 2012

Letter from Norman Lamb to the Chairman

7455/11: PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING CERTAIN REGULATIONS RELATING TO THE COMMON COMMERCIAL POLICY AS REGARDS THE PROCEDURES FOR THE ADOPTION OF CERTAIN MEASURES (TRADE OMNIBUS I)

In your Committee's response to Edward Davey's letter of 8 December you asked for a further update on developments with this proposal ahead of a debate in European Committee C. This debate has now been arranged for Monday 12 March and I am therefore writing to provide the requested update.

There have been developments on two fronts: in the European Parliament (EP) and in the Commercial Questions Council Working Group (CQG).

On 25 January the **EP's International Trade Committee** (INTA) voted on a series of amendments to the Commission proposal. Consistent with the debate so far, the amendments focused mainly, but not exclusively, on the proposed revisions to the EU basic anti-dumping[1] and anti-subsidy[2] regulations. The central focus of the amendments was, as expected, the timelines for investigations and the involvement of Member States (MS). In general, the result of the INTA amendments is a movement towards a slight tightening of investigation timescales and the provision of an informal information and consultation mechanism at stages where the Commission had proposed removal of MS consultation.

An EP Plenary discussion of the Commission's Trade Omnibus I proposal is currently scheduled for the week beginning 12 March.

[1] Regulation (EC) no. 1225/2009
[2] Regulation (EC) no. 597/2009

There have been two further rounds of discussion in the **CQG**, from which it is clear that there remains a strong consensus of opinion amongst MS. The focus of discussions has been on proposed revisions to the basic anti-dumping (AD) regulation (with a direct read-across to the anti-subsidy (AS) regulation). The Danish Presidency, building on the work of the Hungarian and Polish Presidencies, has presented non-papers addressing the issue of MS involvement in those areas where the Commission has proposed to eliminate such consultation. The non-papers present firstly, an overarching right of MS to request information and express opinions on any matter related to the application of the AD (and AS) Regulation. Second, they suggest a level of involvement of MS at each stage of an investigation based, in the majority of instances, on an 'information +' approach. An 'information+' approach places an obligation on the Commission to inform MS and to take into account any views expressed at stages of an investigation where the Commission had proposed to eliminate MS involvement.

Subject to further discussion on some few points of detail, the UK supports the Presidency approach. Most MS hold a similar view overall, though there may prove to be differences on the detail. The Commission has been constructive in its response, though reserving its formal position to that of its original proposal. The Council Legal Service has also been cautiously positive towards the Presidency ideas but has, in its role as guardian of the principles established by the horizontal comitology regulation (182/2011), made clear that no new decision-making procedures can be established.

The Commission remains resistant to the Council's wish to retain investigation timelines as in the current AD and AS Regulations.

I hope this is helpful and look forward to discussing this dossier further on 12 March.

March 2012

Letter from the Chairman to Norman Lamb

Proposal for a regulation amending certain regulations relating to the common commercial policy as regards the procedures for the adoption of certain measures (Trade Omnibus 1) (32575)

Thank you for the update contained in your letter of 7 March. As intended, its contents were considered in the course of the debate on this proposal in European Committee C on 12 March.

14 March 2012

Letter from Mark Prisk to the Chairman

15243/11: PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL LAYING DOWN COMMON PROVISIONS ON THE EUROPEAN REGIONAL DEVELOPMENT FUND, THE EUROPEAN SOCIAL FUND, THE COHESION FUND, THE EUROPEAN AGRICULTURAL FUND FOR RURAL DEVELOPMENT AND THE EUROPEAN MARITIME AND FISHERIES FUND COVERED BY THE COMMON STRATEGIC FRAMEWORK AND LAYING DOWN GENERAL PROVISIONS ON THE EUROPEAN REGIONAL DEVELOPMENT FUND, THE EUROPEAN SOCIAL FUND AND THE COHESION FUND AND REPEALING REGULATION (EC) NO 1083/2006 + ADDS 1 -4

15247/11: PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE EUROPEAN SOCIAL FUND AND REPEALING REGULATION (EC) NO 1081/2006

15249/11: PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND THE COUNCIL ON SPECIFIC PROVISIONS CONCERNING THE EUROPEAN REGIONAL DEVELOPMENT FUND AND THE INVESTMENT FOR GROWTH AND JOBS GOAL AND REPEALING REGULATION (EC) NO 1080/2006

15250/11: PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE COHESION FUND AND REPEALING COUNCIL REGULATION (EC) NO 1084/2006

15251/11: PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING REGULATION (EC) NO 1082/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 5 JULY 2006 ON A EUROPEAN GROUPING OF TERRITORIAL COOPERATION (EGTC) AS REGARDS THE CLARIFICATION, SIMPLIFICATION AND IMPROVEMENT OF THE ESTABLISHMENT AND IMPLEMENTATION OF SUCH GROUPINGS

15253/11: PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND THE COUNCIL ON SPECIFIC PROVISIONS FOR THE SUPPORT FROM THE EUROPEAN REGIONAL DEVELOPMENT FUND TO THE EUROPEAN TERRITORIAL COOPERATION GOAL

I am writing further to your Committee's Report of 18 April 2012, on the above Regulations that will be discussed at the General Affairs Council (GAC) on Tuesday, 24 April.

Can I first thank you for considering my letter of 17 April so promptly. I apologise again for the short notice. It is unfortunate that the decision of the Danish Presidency to seek a partial general approach on some elements was only notified to us during the Easter break. The Presidency decided to move towards agreement early because of the substantive progress it had made on these elements. There have been working groups twice a week throughout the Presidency, and this pace has delivered results. We will certainly make clear to the Presidency your concern about the short notice.

I was disappointed that your Committee felt unable to grant a scrutiny waiver in respect of the Regulations for the European Regional Development Fund (ERDF), the European Social Fund (ESF) and the European Territorial Cooperation (ETC) goal. I note however that, as a result of the debate on 6 March and the successful adoption of the Government's motion, the draft Common Provisions Regulation has cleared scrutiny in the House of Commons. Many of the elements of the partial general approach concern Articles in the Common Provisions Regulation. This includes Article 17 and Annex IV that deal with ex ante conditionalities, as well as many of the rules on eligibility and management and control. I believe that the articles in the ERDF, ESF and ETC Regulations to be considered at next week's GAC are uncontentious.

As I outlined in my letter of 17 April, I am reassured that we should be able to look again at elements that are affected by other negotiations, including on other parts of the package of cohesion policy regulations, as well as the MMF and the Financial Regulation. Indeed, at the meeting of the Committee of Permanent Representatives (COREPER) yesterday, the Presidency undertook to ensure its commitment that "nothing is agreed until everything is agreed" was formally recorded in the minutes of the GAC next week.

I continue to believe that closing off the discussion on the areas where substantial agreement has been reached will allow us to focus on the remaining negotiating blocks where many difficult issues remain to be resolved. These include thematic concentration (including ring-fencing), financial instruments and performance management. By showing willingness to progress negotiations in a constructive manner, we should have more influence on the outstanding issues.

In view of the above points (and in particular that the main Regulation has cleared scrutiny), I am afraid I have decided to override scrutiny on this occasion. We will however make clear that any agreement to a partial general approach is on the explicit basis that “nothing is agreed until everything is agreed”.

I am also happy to have a call with you directly to outline in greater detail the reason for my decision to override.

20 April 2012

Letter from the Chairman to Mark Prisk

Classification of packaging and packaging waste (33805) 8488/12

The Committee had before it today your Explanatory Memorandum of 18 April on this proposal, amending and expanding the list of illustrative examples in Annex I of Directive 94/62/EC.

We noted that only a small number of the items on this list was new, and that, in the main, these did not seem likely to give rise to any major problems. However, we also noted that you would be preparing an Impact Assessment, and, although we think it unlikely that the proposal will require a substantive Report to the House, we nevertheless though it sensible to defer a final decision on this until we had received your Assessment. Consequently, we are in the meantime holding the document under scrutiny.

23 April 2012

CABINET OFFICE

SCRUTINY RESERVE OVERRIDES: JANUARY-JUNE 2010

Letter from Sir Jon Cunliffe to the Chair

I am writing to provide the latest list of scrutiny overrides as agreed between my officials and the Clerk to your committee.

This report covers the period when Parliament had been dissolved and given that your Committee did not meet from early April until September, inevitably the figures are high.

The list shows 60 instruments or documents on which overrides resulted, 52 of which were overrides in the House of Commons.

We continue to work on behalf of Ministers to press Departments to manage their business effectively and reminded 'departments to review outstanding business before the dissolution and then throughout the period after Parliament returned as we approached the return of the two Committees. We also request that Ministers write to the Committees about Presidency priorities so that there can be a focus on business that can be expected to be progressed during each Presidency, We also pressed departments constantly to submit outstanding EMs as quickly as possible after the formation of the new Government, And tam aware that the Minister for Europe has written to Baroness Ashton about the importance of documents emerging from the institutions in good time to allow for effective scrutiny by national Parliaments.

Also most recently we hosted a meeting of scrutiny coordinators here to take our existing scrutiny processes and used the meeting for coordinators to look at issues of concern and to share
Best practice. We hope that strengthened guidance and it better 3bared understanding of the challenges the scrutiny process throws up will result from this and it is our intention that coordinators meet regularly in the future. Also hope my team and colleagues from FCO can meet regularly with the clerks to share concerns and move issues forward.
7 December 2010

Letter from the Chair to Sir Jon Cunliffe

Thank you for your letter of 7 December enclosing the report on scrutiny reserve overrides in January-June 2010.

The Committee continues to find the provision of the table of overrides by department extremely helpful. The fact that the period concerned covers the dissolution and the period before the European Scrutiny Committee was set up means however that little can be taken from this particular set of figures. However, there remains an outstanding debate on subsequent documents on the Terrorist Finance Tracking Programme.

Like its predecessor, the Committee takes breaches of the House‘s scrutiny reserve resolution very seriously. We look forward to seeing the figures for the period September to December and will continue to monitor the incidence of overrides and the reasons for them closely.
12 January 2011

DEFENCE

Letter from Gerald Howarth to the Chair for Information

I am writing to give you an overview of the Hungarian Presidency‘s priorities in the area of Defence over the next six months. I hope that this will help you to plan scrutiny of dossiers that may be considered by the Foreign Affairs Council (in Defence Ministers formation) during this period. The Hungarian Presidency plans to host the following Defence Ministers‘ meetings:

 24-25 February - Informal Meeting of Defence Ministers in Budapest;

 24 May - FAC (Defence/Development) in Brussels.

This is the first Presidency in which the High Representative will lead on foreign and security policy. During this transition, while the Hungarian Presidency will remain involved in developing the Common Security and Defence Policy (CSDP) agenda, it will not exercise the same control as was previously the case.

The **European External Action Service (EEAS)** became fully operational at the start of the Hungarian Presidency. The Hungarians see conflict prevention as an important theme for the EEAS.

The Hungarian Presidency may also wish to discuss the implementation of **Lisbon Treaty Instruments** within CSDP, for example Permanent Structured Cooperation. Following on from UK suggestions during the Belgian Presidency, discussions should also continue on **Pooling and Sharing in Capability Development.**

The Presidency has indicated that it will prioritise the running of **Civilian Missions**. It is likely to focus discussions on management, civilian pre-deployment training, and legal/financial issues.
25 January 2011

Letter from Gerald Howarth to the Chair

I will be attending the European Defence Agency (EDA) Steering Board on 9 December 2010. I enclose the EDA documentation for the Steering Board, setting out the position I intend to take on each of the agenda items. In addition, I will write to you again after the meeting to inform you of the outcomes.

Appointment of a new Chief Executive

Ministers will be invited to endorse the appointment of Claude-France Arnould as the Agency's next Chief Executive, I will support this appointment.

Extension of Contract of Deputy Chief Executive for Operations Longer term, I believe that debate is required between EDA participating Member States on whether the Agency requires two Deputy Chief Executive positions or only one; views are mixed among nations. Until this debate is held, however, I am content to support the proposed extension of Adam Sowa as the Agency's Deputy Chief Executive (Operations).

EDA Work Programme 2011

Ministers will be invited to approve the EDA Work Programme for 2011. We believe that the budget and work programme are linked. I am not prepared to accept the 4% increase in the budget currently proposed when we are reducing our national defence spending by around 7.5%. As the work programme is based on the assumed budget increase I therefore assess that it is unaffordable. I will, however, support the work programme proposed by the Agency on the basis that it will be revised once the Agency's budget allocation is agreed for 2011.

Defence Data and Benchmarks

The Agency compiles and publishes data on an annual basis covering basic statistics for the Agency and its Member States. The main findings from the 2009 data results are that the total aggregate defence expenditure has fallen for a second consecutive year, a 3.7% decrease since 2008, which also includes a fall in personnel numbers. Although there has been positive development in collective benchmarks for equipment procurement, spending relating to research and technology continue to fall. I am content with the Defence Data work and will agree that it should continue in the future.

European Framework Co-operation (EFC) - Joint Investment Programme Chemical Biological Radioactive Nuclear (JIP CBRN) Protection

The EFC is aimed at maximising coherence of civilian security, space and defence related research. Ministers will be invited to note the progress made on the EFC initiative and the work on CBRN Protection in particular, and to task the Agency to initiate the process for requesting the JIP CBRN project is currently not a priority for UK Defence and we are not active participants in the programme, we support its potential to assist other Member States to address this capability. I will therefore be agreeing to the recommendations made without financial commitment.

Level Playing Field (LPF)

A 'level playing field for industry' remains a long-term aspiration of the EDA's work on the European Defence Equipment Market (EDEM). Ministers will be asked to note the Level Playing Field Progress report; affirm that the LPF initiative is a strategic and long term exercise which will be aimed at aligning national approaches through Intergovernmental cooperation and to task the Agency to continue working on LPF based on the findings of the report. The UK supports the work to date, recognising the need to protect national flexibility and sovereignty, and agrees with the need to concentrate on areas where there is a common agreement among participating
Member States focussing on Harmonisation/Co-ordination of Regulations/Practices,
Security of Supply, Offsets, Small to Medium Enterprises and Market Awareness. I am content to agree to the recommendations in the paper.

EU Radio Spectrum Policy Programme

On 20 September, the European Commission transferred to the European Parliament and Council its proposal for the first Radio Spectrum Policy Programme (RSPP), which will outline how the use of radio spectrum can contribute to the single market and other European Union policies, including in Defence. Ministers will be invited to adopt the recommendations made for the EU Radio Spectrum Policy Programme and, in doing so, note that the policy will have medium to long term implications on the use of Spectrum by military systems. I intend to agree to the recommendations proposed by the EDA. It is possible that participating Member States will debate whether or not the EDA should present the collegiate views of its participating Member States in European meetings on this subject. I do not agree that the EDA should take on this role; it is a matter of national sovereignty for UK views to be represented by the UK.

Pooling and Sharing

Following the EU Defence Ministers Informal meeting in Ghent on 23/24 September 2010, which I attended, Ministers recognised that greater co-operation for participating Member States and the pooling and sharing of capabilities offered a means of mitigating the effects of national reductions in defence budgets. The EDA is examining opportunities for pooling and sharing. The Ministerial Steering Board will be invited to note the

work to date, task the EDA to make proposals on how participating Member States can build on this work and encourage Member States to raise future proposals. Our position is that work needs to focus on high "value added" activity, acknowledging the work currently ongoing, but that the EDA must focus on where gaps currently exist in defence for pooling and sharing opportunities. Although the UK is currently not involved in any EDA pooling and sharing initiatives, we support the work in principle on the basis it has the potential to enhance capability, and I intend to support the recommendations made. I will, however, seek further clarification on when the details of the Agency's gap analysis work will be reported to Member States and what informal consultations have been conducted with NATO to date. Co-ordination and cooperation between the EU and NATO is critical to minimise duplication of effort.

Single European Sky (SES) / SES Air Traffic Management Reform (SESAR)

The SES programme relates to the legal and technical approaches to Air Traffic Management Reform. Although the SES programme has its origins in the civil sector, led by work in the Commission, there is correlation to the defence sector. Ministers will be invited to task the Agency further to investigate Airworthiness, Unmanned Aircraft System operations, Security of Airspaces and establish a common approach to safeguard the European Defence Technological Industrial Base (EDTIB). In addition, it is recommended that Ministers task the EDA to engage with Air Traffic Management experts within various international organisations and report back their findings. While I welcome the EDA's position and intent, and consider that the Agency may have a role to play, I would prefer to see it more clearly defined. Therefore, I will request that the EDA conduct further analysis to explain, in detail, the precise role it will take in establishing the defence requirements from the SES programme.

Defence Research at Union Level

The Steering Board will be asked to note the report on the Defence Research at Union level and in preparation for Framework Programme 8 (which relates to the Commission's research activities for the period 2014-2020), encourage constructive dialogue between the Agency, the Commission and European Parliament. While I will support the principle that there should be greater co-ordination between the EDA and the Commission, I am clear that this must not cut across sovereign state responsibilities.
09 December 2010

Letter from the Chair to Gerald Howarth

The Committee has asked me to thank you for your letter of 17 February 2011 in which you reported the outcome of the 9 December 2010 EDA Steering Board Meeting.

The Committee noted: that the majority of the debate focussed on senior management appointments; that having reviewed proposals from the HR on the appointment of a new Chief Executive and a two-year extension of the current Deputy Chief Executive (Operations), it was agreed that a further period of consultation should take place, to be completed before Christmas; and the importance you attach to working closely with the next Chief Executive and PMS to improve the Agency's performance and effectiveness.

This brought to mind remarks you made last summer on the latest Head of Agency's Report. You will no doubt recall that, as well as describing progress on the Agency's main output areas and providing an overview of certain capability development programmes, the Report also noted that preparatory work by the Agency was underway to replace, later in 2010, the Council Joint Action of 2004 establishing the EDA with a new Council Decision on the Agency's statute, seat and operational rules in accordance with the provisions of the amended Treaty on European Union (TEU). In your Explanatory Memorandum of 27 July 2010, you said:

"For the time being we will continue to participate in the European Defence Agency but, as part of the work on the Strategic Defence and Security Review (SDSR), we are reviewing all aspects of our defence engagement

with international institutions, including the EDA, to ensure that it matches the UK's priorities and interests."

So far as the Committee is concerned at least, there has been no further word. Given your apparent concern to improve the EDA's performance and effectiveness, the Committee would be grateful for an update on where matters now stand with regard to replacement of the 2004 Joint Action and, now that the SDSR has been completed, on the Government's general view of the EDA per se and the extent to which it matches the UK's priorities and interests.
2 March 2011

DEFENCE & SECURITY DIRECTIVE 2009/81/EC – TRANSPOSITION

Letter from Peter Luff to the Chair

I am writing to draw your attention to Statutory Instrument 1848, the Defence and Security Public Contracts Regulations (DSPCR), which I have today laid before Parliament. These Regulations transpose into domestic legislation Directive *2009/81/EC* of the European Parliament and Council, the Defence and Security Directive, which introduces new procurement rules for the defence and security sectors.

The Defence and Security Directive was adopted by the European Parliament in July 2009. andmust be transposed into domestic legislation by 21 August 2011. The DSPCR make consequential amendments to existing public contract and utilities regulations so as to make clear that certain procurements which previously fell within scope of those regulations are now covered by the implementing regulations.

The New Directive's purpose is to create a level playing field for the defence and security procurement in the EU. Its effect can be summarised as less use of Article 346 Treaty on the Functioning of the European Union, the 'Warlike stores" exemption. that allows us to adopt measures to protect at least some of our essential interests of national security (e.g. on security of information, and security of supply) as we now have a Directive specifically tailored to defence and security procurement.

Consequently, more of our defence and security contracts will be subject to:

• EU-wide competition under regulated procurement procedures based on the principles of transparency. fairness and non-discrimination, except in the strictly limited circumstances where single source procurement is allowed;

• a remedies regime that allows for aggrieved parties to bring legal challenge in respect ofall procurement decisions that do not adhere to *the* substance of the New Directive; and for more rigorous enforcement of our obligations under European procurement law by the European Commission now that they have created more appropriate rules for the defence and security sector.

The provisions of the Defence and Security Directive are largely mandatory. There are, however, some areas where Member States have an element of choice as to how to implement and how the domestic regulatory regime is structured. In exercising those choices the MOD has selected the least burdensome option or the option that requires the minimum change from the current regime, taking into account the specialised nature of the defence and security markets. In so doing, it is our view that implementation has not gone beyond the minimum necessary to comply with the new Directive, that there has been no extension of its scope or addition to its substantive requirements and, therefore, that there is no 'gold-plating'.

Our approach to transposition has been developed over two rounds of cross-government and public consultation, including engagement with companies from the UK's defence and security related industries, and has been endorsed by the National Security Council and the Reducing Regulations Committee.
28 July 2011

Letter from the Chair to Peter Luff

The Committee has asked me to thank you for informing it of the transposition of the above Directive into domestic law. It was grateful for the detail you provided.

12 October 2011

ERC & EEAC

SUBSIDIARY PROTOCOL AND CONSULTATION WITH DEVOLVED ASSEMBLIES

Letter from Irene Oldfather to the Chair

May I offer my congratulations on your appointment as chair of the European Scrutiny Committee.

For some time now I have been in discussion with Michael Connarty, previous chair to the committee, via the EC-UK forum on the implications of the subsidiary protocol set out in the Treaty of Lisbon.

I last wrote to Mr Connarty in July following the publication of my committee's report on the impact of the Treaty of Lisbon on Scotland.

I now anticipate a parliamentary debate, on 8 December, on the recommendations contained within our report. At that time the Scottish Parliament will consider the proposal to establish a formal mechanism that will facilitate scrutiny and conflict resolution in relation to the subsidiary protocol. Where a potential breach of the principle of subsidiary has been identified such a mechanism should ensure that both the House of Commons and the House of Lords can take account of the views of the Scottish Parliament within the required timeframe.

My Committee welcomes your commitment to consult with the devolved assemblies, as set out in the letter from Michael Connarty of 6 January 2010. In particular we wish to ensure that the Scottish Parliament has an opportunity to raise concerns in relation to non compliance and to have those views reflected in your committee's report in support of a reasoned opinion. We also welcome your commitment to send the views of the Scottish Parliament to the UK Government should our response be received after your committee has proposed a draft opinion or where your committee disagrees with the views of the Scottish Parliament.

We anticipate the need for further discussion with you on the recommendation for establishment of a formal mechanism between the Scottish Parliament and the European Scrutiny Committee on the subsidiary protocol following our plenary debate in November.

I understand that our Presiding Officer, Alex Fergusson, will raise this matter at the next meeting of the speakers and presiding officers in early December.

In the meantime I will ask my clerks to continue to liaise with your clerks to ensure that we are engaging effectively in relation to potential breaches of subsidiary and I look forward to meeting you at the next EC-UK meeting, which I understand you are hosting, early in the new year.
15 October 2010

Letter from the Chair to Irene Oldfather

Many thanks for your letter of 15 October, with its kind message on my appointment.

I look forward to reading the debate in the Scottish Parliament on the recommendations contained in your committee‘s report. In terms of the relationship between our committees regarding the subsidiary protocol, I can confirm that the position of the European Scrutiny Committee remains that which was set out in our report ―Subsidiarity, national parliaments and the Lisbon Treaty‖ (33rd Report, session 2007–08). In that report we stated that because of the short time allowed for submissions of reasoned opinions the Committee :*“considered that it:*

 should place the onus on the devolved assemblies or parliament to obtain draft legislation, vet it and tell the Committee as quickly as possible if they have objections; and

 should invite the comments of the devolved assemblies or parliaments on the Committee’s drafts of opinions where the draft includes a reference to a matter on which one or more devolved assemblies have expressed a view.

If a devolved assembly or parliament were not ready to express its views until after the Committee Motion had been proposed, or if the Committee disagreed with the views, the assembly or parliament should be invited to send its views to the Committee for onward transmission to the Government.”
You raise the question of what you describe as ―a formal mechanism‖. I am sure we can discuss this and other matters when we meet at the EC-UK forum on 24 January.
In the meantime I should stress that we scrutinise all EU documents, not just those subject to the reasoned opinion procedure, and we examine all aspects, not just subsidiary. Therefore, if your committee is concerned about subsidiary, or any other matter, in relation to any EU proposal, it is welcome to let us know.
3 November 2010

Letter from Rhodri Morgan to the Chair

Firstly may I congratulate you on your appointment as Chair of the European Scrutiny Committee of the House of Commons.

On 6 July the European and External Affairs Committee, which I continue to chair, considered a paper on developments in relation to the Subsidiarity Protocol in the Lisbon Treaty and the approaches being adopted by other regional parliaments (attached for information). In discussion it was agreed that I would write to you, and your opposite number in the House of Lords, to seek confirmation that previous undertakings to take account of views of the National Assembly for Wales on subsidiary issues would continue in this Parliament, in the absence of any formal protocol with the devolved legislatures.

Following the re-establishment of your European Scrutiny Committee, I welcome continued good relations between the staff of our Committees in exchanging information on scrutiny matters.
I can also report positive developments in Wales regarding this Committee‘s requests for our Government to provide information to facilitate the EU legislative scrutiny process. On 4 May the First Minister for Wales undertook to provide details of explanatory memoranda for EU legislative proposals on which the Welsh Government has been consulted by the UK Government. A process is now in place whereby it will forward final explanatory memoranda that include its views on subsidiary matters to the National Assembly for Wales, at the same time that these are provided to the UK Parliament.

You may also be interested to know that, as part of a current review of the Assembly‘s Standing Orders, the Committee is seeking the following:

i) a recognition of powers for the European and External Affairs Committee to submit formal views to the UK Parliament on subsidiary matters on behalf of the National Assembly for Wales, and

ii) a recognised emergency or exceptional circumstances procedure to be adopted to cover those occasions when the 8-week consultation timeframe coincides with Assembly recess periods, thereby preventing normal consideration.

The rationale for the first point is that whilst it would be ideal for the whole of the National Assembly for Wales to be able to consider and endorse reports on subsidiary matters in plenary session, this would inevitably delay the process of submitting Welsh concerns to the UK Parliament within the tight timeframe available. The European and External Affairs Committee, or its equivalent in the Fourth Assembly starting from May 2011, may therefore need to be formally recognised in Standing Orders as having plenary-type powers to make its case within the eight weeks.

Where possible the responsible Committee will consider proposals which raise subsidiary concerns in formal session, but point ii) above recognises that where Assembly recess periods prevent such normal consideration, it would also be helpful to recognise a procedure that allows views to be put forward prior to formal endorsement by the Committee.

The Parliamentary Committees of the House of Lords and Commons have previously given undertakings to consult with officials in Wales and to take account of views, however informally they may be presented. I have therefore suggested that if the responsible Committee Chair at this end endorses the submission of a view based on legal advice from the Assembly‘s Legal Services, it could be presented to the UK Parliament for consideration in a timely manner within its scrutiny process. That view would then be communicated to other Committee Members in advance of the next formal Committee meeting.

These matters are still under consideration by the Assembly‘s Business Committee, which will be meeting in public this autumn to consider how Standing Orders may be revised in advance of the Assembly elections next year.

I note that the Chair of the Scottish Parliament‘s European and External Relations Committee has also written

to you regarding its approach to subsidiary issues, and I look forward to discussing this and other matters of common interest at the next meeting of the EC-UK Forum in the New Year, which I understand you are due to host.
25 October 2010

Letter from the Chair to Rhodri Morgan

Many thanks for your letter of 25 October, with its kind message on my appointment. I am happy to confirm that the position of the European Scrutiny Committee regarding subsidiary and the devolved assemblies and parliament remains that which was set out in our report Subsidiarity, national parliaments and the Lisbon Treaty‖ (33rd Report, session 2007–08). In that report we stated that because of the short time allowed for submissions of reasoned opinions the Committee :*"considered that it:*

 should place the onus on the devolved assemblies or parliament to obtain draft legislation, vet it and tell the Committee as quickly as possible if they have objections; and

 should invite the comments of the devolved assemblies or parliaments on the Committee's drafts of opinions where the draft includes a reference to a matter on which one or more devolved assemblies have expressed a view.

If a devolved assembly or parliament were not ready to express its views until after the Committee Motion had been proposed, or if the Committee disagreed with the views, the assembly or parliament should be invited to send its views to the Committee for onward transmission to the Government."
I do not consider this to amount to what you describe as ―an undertaking to consult with officials in Wales and to take account of views, however informally they may be presented‖. But I am sure we can discuss this and other matters when we meet at the EC-UK forum on 24 January.
In the meantime I should stress that we scrutinise all EU documents, not just those subject to the reasoned opinion procedure, and we examine all aspects, not just subsidiary. Therefore, if your committee is concerned about subsidiary, or any other matter, in relation to any EU proposal, it is welcome to let us know.
25 October 2010

DEPARTMENT FOR INTERNATIONAL DEVELOPMENT

EU Statement for World AIDS Day, 1 December

Letter to the Chair from Stephen O'Brien: For Information Only

I am writing to inform your Committee about the statement the EU will be issuing on December 1st in support of World AIDS Day (attached for information). The UK has commented on earlier versions of the EU Statement and we are content with the final draft.

Some of the key messages are that the EU**:**

 Pays tribute to the millions of people who have died as a result of AIDS, and to all those who have supported efforts to halt the epidemic.

 Acknowledges the significant progress made in scaling up access to treatment and reducing numbers of new infections, particularly in Sub-Saharan Africa, recognising that AIDS is still a major health problem.

 Calls for stronger prevention efforts which address biomedical, behavioural and structural factors and a special focus on young people.

 Recognises that more efforts are needed to integrate HIV with sexual and reproductive health, and the need to empower women and girls.

 Notes the importance of stronger health systems but also the need to address AIDS beyond the health sector.

 Calls for action to confront stigma and discrimination, including the removal of punitive and discriminatory laws.

 Makes explicit its support for the virtual elimination of paediatric AIDS. Recognises that further mobilisation of resources will be needed to sustain progress made.

 Care and support have been the neglected sisters of the Universal Access family. An effective response to AIDS must include the protection of human rights, action on stigma and discrimination, support for orphans and vulnerable children, wealth-creation and community-wide responses to the epidemic.

The UK is committed to supporting efforts to reach Universal Access for HIV prevention, treatment, care and support. The EU statement is in line with DFID policy and our commitment to put the health of women and girls at the centre of the international development agenda.

The UK is the 2nd largest bilateral donor of funds for AIDS, providing £2 billion between 05/06 and 08/09. Our policies focus on effective interventions, such as the prevention of

mother-to-child transmission, condom distribution and use, family planning, harm reduction, and addressing underlying factors that fuel the epidemic, such as gender-based violence and poverty. We also work in partnership with governments and donors to strengthen health systems: supporting health worker training and deployment, efficient medical equipment and drugs procurement, and addressing barriers to access care such as transport, user fees and gender-based inequalities.

Member States have informally agreed the text of this statement and we therefore do not expect any objections to its adoption.
22 November 2010

Green Paper on EU Development Policy in Support of Inclusive Growth and Sustainable Development

Letter from Stephen O'Brien to the Chair

In drafting our reply to the Commission's Green Paper on development policy, DFID consulted with its country offices, Whitehall colleagues, civil society groups and NGOs. We also sent the Green Paper to both Parliamentary Scrutiny Committees for their consideration. In the Government's response to the consultation, we emphasised that EU development policy should:

- Stay focused on poverty reduction
- Promote economic growth and the role of the private sector
- Demonstrate clear results
- Improve aid transparency
- Ensure coherence between development and wider EU policies
- Meet our commitments aid volumes
- Review our approach to aid effectiveness and strategic partnerships

I have attached the Government's full response (Letter addressed to Andris Piebalgs dated 3 February 2011).

Green Paper on the Future of EU Budget Support to Third Countries
In responding to the Commission's Green Paper on budget support, DFID consulted with its country offices and with colleagues at the Foreign and Commonwealth Office. We also sent the Green Paper to both Parliamentary Scrutiny Committees for their consideration. The Government's response took into account the ongoing reviews of DFID's bilateral and multilateral aid programmes (due to be published on1 March) and emphasised that EU policy on budget support should:

- Provide greater transparency about budget support allocation decisions
- Show how budget support can help to achieve a stronger focus on results and value for money
- Strengthen domestic accountability in partner countries
- Raise political governance issues through its dialogue on budget support with partner governments

I have attached the Government's full response (Fokion Fotiadis dated 14 February 2011).

Update on Hungarian Presidency Priorities
Hungary's EU Presidency began on 1 January 2011 and will end on 30 June, to be succeeded by Poland. I have set out below the development policy issues which their Presidency will oversee:

Green Paper on EU Development Policy in Support of Inclusive Growth and Sustainable Development
Following the Green Paper consultation, a Commission Communication is expected in June and will therefore be handled by the Polish Presidency. It is still unclear whether the Commission intends to focus on growth or to consider the future of EU development policy more broadly. The UK's view is set out above and in the attached letter.

Green Paper on the Future of EU Budget Support to Third Countries

The Commission is collating responses to its Green Paper on the future of EU Budget Support. A Communication is expected in June *I* July, and will therefore be handled primarily by the Polish Presidency. The UK's view is set out above and in the attached letter.

Multi Annual Financial Framework 2014-2020.
The Commission is currently collating responses to its public consultation on the future of its external instruments and is expected to table proposals for the next Multi Annual Financial Framework 2014-2020 (MAFF) under the Hungarian Presidency. Initial negotiations will fall to the Polish Presidency. A coordinated UK negotiating position on the MAFF is currently being drawn up across Whitehall. On development this is likely to include the aims of maintaining ODA levels as a proportion of the EU budget and opposing the budgetisation of the European Development Fund (EDF). A high level UK view on the future of EU external instruments will be sent in March 2011 to Commissioners Ashton, Piebalgs and Fule from the Secretary of State for Development and the Foreign Secretary.

April Package and Official Development Assistance (ODA)
In April the Commission will produce a Communication with results from the Monterrey Questionnaire on Member States' ODA levels (the "April Package"). The Council has committed to an annual discussion of ODA levels by Heads of State. The UK will press for this at the June European Council.

Aid Effectiveness and Transparency
The EU is preparing a position ahead of the High Level Forum IV on Aid Effectiveness in Susan in November. This will be finalised once evidence from the Paris survey on aid effectiveness is released in June / July, with most work falling to the Polish Presidency. The UK's priority is to ensure strong ongoing commitment in Europe to the aid effectiveness agenda, including international political leadership.

Water and Sanitation
We understand the Hungarian Presidency will produce a Presidency paper on water and take forward Conclusions through the Environment Council. The EU supports their focus on water and sees EU Preparations for Rio+20 as a significant opportunity to address the issue of water resource management for sustainable growth.

UN Least Developed Countries Summit (LDC IV)
An EU position will be agreed ahead of the LDC IV conference in Istanbul on 9-13 May. The UK will engage supportively in preparation of the EU position on issues such as debt sustainability and management, gender equality and building on the Duty Free Quota Free agreement reached at Seoul.

Sudan
The South Sudan referendum on secession has resulted in an overwhelming vote for independence. South Sudan was discussed at the Development Ministers' Informal in February, and the idea of a high level meeting in summer was mooted. A key issue is ensuring a fast-track accession to the Cotonou Agreement, and therefore access to EDF funds, for the new South Sudan. The UK believes it is important to ensure that South Sudan has the capacity and levels of governance in place to absorb EU and other donor funds before allocating significant additional resources.

European Development Fund (EDF)
The EDF 10 Performance Review will be published in Spring 2011. This was mandated by the Cotonou Agreement and asked the Commission to look at EDF cooperation post-2013. The review will look at commitments, payments, lessons learned, results, and impact but will not address EDF budgetisation, which the Commission will handle separately. The UK would like to see a greater focus on results and value for money across the EDF.

Humanitarian Aid
During the Hungarian Presidency, the Council will work on the EU's renegotiation of the Food Aid Convention, plans to adopt Conclusions on the European Voluntary Humanitarian Aid Corps, and the mid-term review of the European Consensus on Humanitarian Aid. Work will also begin on proposals for legislation to revise the Council Regulation 1257/96 concerning Humanitarian Aid. It is expected the majority of the work will fall to the Polish and Danish Presidencies. The UK is concerned about the development of a

Voluntary Humanitarian Aid Corps, and will take an active interest in the specifics of the proposal. The UK's detailed view on EU Humanitarian Assistance will be set out in the Multilateral Aid Review.
4 March 2011

Letter from the Chair to Stephen O'Brien

The Committee has asked me to thank you for your letter 2 March 2011 and its attachments, focussing on the Government's response to the two Commission Green Papers on EU Development Policy in Support of Inclusive Growth and Sustainable Development and on the Future of EU Budget Support to Third Countries (which the Committee cleared on 15 December 2010 and 17 November 2010 respectively). As you note, we now await further Commission Communications on these matters this summer

You also wrote about a number of other key development issues. Most will be of more interest to the International Development Committee (to whose Chairman the Committee is glad to see that you copied your letter and attachments). Those of interest to this Committee would seem to be:

• the planned Commission Communication with results from the Monterrey Questionnaire on Member States' ODA levels (the "April Package");
• the spring 2011 EDF 10 Performance Review. The Committee notes that you would like to see a greater focus on results and value for money across the EDF, and looks forward to hearing more about this when the relevant document is submitted for scrutiny;
• likewise whatever the Commission produces on EDF budgetisation, which you say the Commission will handle separately;
• work on the EU's renegotiation of the Food Aid Convention, plans to adopt Conclusions on the European Voluntary Humanitarian Aid Corps, the mid-term review of the European Consensus on Humanitarian Aid and revision of the Council Regulation 1257/96 concerning Humanitarian Aid. The Committee notes that you are "concerned about the development of a Voluntary Humanitarian Aid Corps, and will take an active interest in the specifics of the proposal", while your detailed view on ED Humanitarian Assistance will be set out in the Multilateral Aid Review;
• the Committee looks forward to hearing more of all of this too, as and when the relevant documents emerge.
9 March 2011

DEPARTMENT OF CULTURE MEDIA AND SPORT

7094/10: PROPOSAL FOR A DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ESTABLISHING A EUOPEAN UNION ACTION FOR THE EUROPEAN HERITAGE LABEL

Letter from John Penrose to the Chair

Thank you for the report of the Commons Committee, sent in September, about the Explanatory Memorandum (EM) submitted by the previous Government outlining the UK's policy position concerning the

proposals for the introduction of a European Heritage Label (EHL). I am now writing to update the Committee on progress with negotiations on the draft Decision and to let you know the proposed timeframe for this proposal.

The Government's position on the EHL has been clear from the outset. Whilst we have not opposed the scheme in principle, we have actively supported the voluntary nature of the scheme - which has been agreed; opposed any additional cost burdens to the current proposal; supported sensible changes to make the scheme as light touch as possible and limited our intervention during the negotiations to these key policy areas.

During discussions on the EHL over the past months, we have continued to oppose any additional financial contribution required by Member States; the proliferation of sites in the scheme; any unnecessarily bureaucratic processes at both European Union and Member State level and pressed for the avoidance of any duplication of existing heritage-related mechanisms such as the UNESCO World Heritage Site designation. We have also made clear that the UK will not be participating in the Label from the outset and that we will review this position following the first evaluation, currently set to be 7 years after it comes into being. I should add, though, that we have worked constructively during discussions to improve the text of the draft Decision to ensure that the Label is fit for purpose and workable for UK sector bodies, should the UK decide to participate at any point in the future.

Only two issues remain under discussion: a proposal that funding for the EHL from 2013 should come from reprioritisation, not new funds (that is not from the "margins"), rather than the Culture programme and the roles of the Council and the Commission in designating the sites.
On the first issue, the Government does not support funding from the EU Budget margins as a point of principle because this increases the size of the EU Budget, and therefore Member States' contributions to it. We have lobbied hard to change the proposal so that from 2013 it would be financed from the Culture Programme. However, due to the likely small sums in question (by EU standards), few other Member States are willing to support us. Without support for our stance from the Commission, from Member States or from the Presidency, we are unlikely to achieve a victory on this since the dossier is decided on qualified majority voting. So we would have to pay our due contribution from my Department's budget regardless.

The second outstanding issue concerns the process for taking decisions on granting of the Label. The original text proposed that, following a decision of the Independent European Panel that is to be established, the Commission would formally designate and also, on occasion, withdraw the Label from sites. However this met with substantial opposition from Member States who wanted the Council to take this role and after considerable discussion, a "Comitology" process was proposed as a compromise solution. As you know "Comitology" is the procedure by which the Commission adopts measures to implement acts of the Council and European Parliament, overseen by a committee of Member State experts. Although we are against any increase in bureaucracy, this compromise is strongly supported by Member States and we regard the process as a 'Lighttouch' approach in comparison to Council designation. So this is probably the best available option for the UK.

In terms of the timeframe for agreement of the EHL proposal, the plan is for Members States to agree a Council negotiating mandate or 'Common Approach' on 5 November at the Deputy-Ambassador weekly meeting (COREPER) with the proposal being endorsed by Ministers at the Education, Youth Culture Council on 18 November.
26 October 2010

Letter from the Chair to John Penrose

Thank you for your letter of 26 October which provides a useful update on negotiations on the draft Decision.

I note your concern to ensure that funding for the proposed EU European Heritage Label should come from existing resources allocated to the Culture programme budget, rather than from the margin, as the latter would constitute additional funding from the EU budget which you would be required to meet from your departmental budget. Although the additional UK contribution in this particular case would be relatively small, I agree that there is an important point of principle at stake.

I understand that the prospect of political agreement at the November Education, Youth and Culture Council has receded and that, instead, there is likely to be a progress report. I should be grateful if you would provide the Committee with further information, particularly on the budgetary aspects, in light of the discussion at the forthcoming Council. Meanwhile, the draft Decision remains under scrutiny.
3 November 2010

17296/10 COM (2010) 674: Commission Communication: Dial 116 000: The European hotline for missing children

Letter from Edward Vaizey to the Chair

Thank you for your recent report (no. 32306) clearing the above Explanatory Memoranda, but requesting further information on the implementation of 116 000 in the UK.

In this report, you requested information about the ongoing negotiations to ensure Universal access of the 116 000 number in the UK. I am pleased to inform you that, as of 1 January 2011, all major UK communication providers now provide access to this number. We hope that the speedy implementation of this number throughout Europe, will go some way in preventing legislation that makes access to this number mandatory being enacted by the Commission.
4 February 2011

Letter from the Chair to Edward Vaizey

Thank you for your letter of 4 February informing the Committee of the successful outcome of Ofcom's negotiations to ensure universal access within the UK to the EU-wide hotline for missing children by dialling the number 116 000. The Committee shares your hope that speedy implementation of this number across the EU will obviate the need for EU legislation introducing mandatory rules on access to the number.
9 February 2011

NEGOTIATION OF AN AGREEMENT BETWEEN THE EUROPEAN ATOMIC ENERGY COMMUNITY (EURATOM) AND THE GOVERNMENT OF AUSTRALIA FOR COOPERATION IN THE PEACEFUL USES OF NUCLEAR ENERGY

Letter from Charles Hendry to the Chair for Information

I am writing to inform you of the agreement of a restricted negotiating mandate for an updated agreement between Euratom and Australia on the peaceful uses of nuclear energy, that was agreed at the Council of Ministers on the 12 July.

The proposal relates to a mandate for the European Commission to renegotiate the current cooperation agreement between Euratom and Australia, which was first signed in 1981. The present agreement expires on 14 January 2012.

The existing agreement covers trade in nuclear material from Australia to the European Atomic Energy Community for peaceful uses.

The new negotiating mandate wishes to include additional provisions on the transfers of nuclear material, in both directions, transfers of equipment as well as nuclear co-operation. It also includes the *Contamination Principle1*.

The Commission have also drafted it to keep it as close as possible to the Euratom Canada negotiating mandate of 2009 which was the subject of an EM submitted on document 14350/08 on 6 November 2008.

My officials will monitor the negotiations as they occur and will seek to update the Committees on any significant developments during the course of the negotiations
1 February 2011

GOVERNMENT RESPONSE TO THE EU GREEN PAPER ON ONLINE GAMBLING IN THE INTERNAL MARKET

Letter from John Penrose to the Chair

Further to your letter dated 27 April 2011, requesting a copy of the Government's formal response to the Green Paper, I am pleased to attach the aforementioned response.

The EU Commission has been under pressure for some time to explore in more detail the issue of cross-border gambling provision in the European Union (EU) both the European Parliament and the Council, under various Presidencies, have asked the Commission to undertake more of a role in terms of gambling regulation and Member States' approaches to it.

The purpose of the consultation is to enable the Commission to get a better understanding of the issues arising from the rapid growth of online gambling in the EU - particularly the assessment of the current system for the regulation of online (remote) gambling across the Member States, the facilitation of best practice between Member States, and the determination of whether further action is necessary to ensure the co-existence of the differing national regulatory models.

The consultation focuses mainly on online gambling and the issues linked to free movement of services.

It also looks at:
• Recent case law
• National definitions of online gambling
• Advertising and sponsorship
• Regulation
• Problem gambling and consumer protection
• Anti-fraud/anti-money-Laundering measures
• Gambling and good causes
• Betting integrity
• ISP and Financial Transaction blocking

The consultation closes on 31 July 2011 and the Government response was prepared and agreed with the Gambling Commission, National Lottery Commission, UK Rep, and other relevant Government Departments. The Devolved Administrations and the Crown Dependencies and Gibraltar were also asked to contribute. The document will be uploaded on to the relevant section of the Commission's website.

The consultation responses will determine any EU follow‑up action, but we think there may be a future push towards regulatory co-operation and possible agreement of common standards. As you can see from the response, we are sceptical of common standards, but suggesting open access to each national market instead
29 July 2011

Letter from the Chair to John Penrose

Thank you for your letter of 29 July 2011 enclosing a copy of the Government's formal response to the Commission's Green Paper on on-line gambling in the internal market.

We note that the Commission intends to publish a follow-up report shortly and look forward to considering the matter again in light of any recommendations it may make for action at ED level.
7 September 2011

18124/10 and 18126/10 Conditional Access Services

Letter from Ed Vaizey to the Chair

This letter is intended to give the further clarification which the Committee requested in its 34th Report of *2010/12,* in response to my letter of 26 May.

The Report rightly describes the questions involved as "highly technical and complex". I have tried not to add unnecessarily to the complexity but I appreciate from the Committee's comments that I have not succeeded in explaining the Government's understanding of the position in the two different scenarios.

The Committee asks in paragraph 7.13 whether the Government has modified its position that the UK's opt-in Protocol applies to any provision of an international agreement falling within the scope of Title V. We have not. It is important though to stress that a provision only falls within the scope of Title V where it is the EU which is exercising the competence in question. If a provision of an international agreement which *would* fall within the scope of Title V, were it to be signed up to by the EU, is instead being signed up to by the Member States in their own right then the EU is clearly not exercising Title V competence and the opt-in Protocol does not apply.

Under "Plan A" then the EU would exercise its competence to sign the Council of Europe Convention *only* with respect to the provisions which parallel those in the Directive - this would not include any of the JHA provisions of the Convention (such as Article 8). On this basis it is, I would suggest, quite clear that a Council Decision providing for the EU to sign up to the non-Title V provisions of the Convention would not trigger the opt-in Protocol and would not need to cite a Title V legal base. The JHA provisions would instead be signed up to by the Member States in their own right and would bind them as a matter of international, rather than EU, law. I hope that this explanation clarifies the position and that you will therefore agree then that there is no conflation of the issues the Committee mentions in paragraph 7.13 of its Report.

As regards the question asked in paragraph 7.14 of the Report, the Government's preference has always been for the Convention to be signed as a mixed agreement, but we are content, as a matter of policy, for the EU to exercise competence in respect of the very minor matters falling within JHA, in the absence of a mixed agreement. A mixed agreement has gained the support of number of other Member States, resulting in the revised draft Decisions referred to below.

The Government therefore intends to pursue its existing policy, and in particular to negotiate strongly for the Convention to be signed as a mixed agreement.

I am pleased to be able to update the Committee on progress through the relevant Council working groups. The Polish Presidency invited comments from Member States and from industry through the Audiovisual Working Group on the proposed Decisions. Industry has submitted evidence of the growing costs to pay TV programme makers and broadcasters from piracy and unauthorised distribution of decoder cards. Member States, including the UK, submitted evidence on the legal base for the proposed Decision. As a result the Presidency has produced a revised text of each Decision with an Art 114 base and a mixed agreement.
3 October 2011

Letter from the Chair to Ed Vaizey

Thank you for your letter of 3 October in which you set out the Government's position on the circumstances in which the UK's Title V opt-in Protocol applies to justice and home affairs provisions contained within an international agreement to which both the EU and Member States are intended parties.

We note that the draft Decisions deposited for scrutiny in December 2010 are likely to be superseded by revised proposals providing for Member States as well as the EU to sign and ratify the Council of Europe Convention on the legal protection of conditional access services.

We look forward to considering these revised proposals once they are formally deposited for scrutiny. Meanwhile, the original draft Decisions remain under scrutiny.
12 October 2011

REGULATION ON ENERGY MARKET INTEGRITY AND TRANSPARENCYIMPACT ASSESSMENT

Letter from Charles Hendry to the Chair

I am writing to inform you that at the Environment Council on 10 October political agreement was reached on the Regulation on energy market integrity and transparency (REMIT). I am pleased to tell you that we successfully negotiated a text which addresses the issues which we highlighted as areas of concern. More detail on these issues follows.

Lack of clarity in definitions of inside information and market manipulation:

We succeeded in negotiating a text which makes the scope of article 2 clearer by including a requirement on ACER to provide non binding guidance (with input from Ofgem acting as the conduit between industry and ACER) on the behaviour which can constitute market abuse. However, there are still concerns amongst market participants that this guidance will not provide sufficient clarity; this is why we argued for guidance to be included and it is hoped that this will provide greater transparency.

Relationship between ACER and National Regulatory Authorities:

The Commission's original proposal gave ACER a power to direct national regulatory authorities. However, we were of the firm view that responsibility for investigation and enforcement of the prohibition on inside information and market manipulation should rest with national energy and financial regulators. In the text which has been adopted investigation and enforcement powers remain with national regulators, and ACER has a monitoring and coordinating role. We were successful in negotiating a text which clearly states that NRAs are responsible for the enforcement and although ACER can direct NRAs to carry out investigations, subject to limited exceptions, the ability to make enforcement decision still rests with NRAs.

Interactions with other financial instruments: MAD, MiFID and EMIR:

REMIT is closely linked with three existing pieces of EU legislation: the Market Abuse Directive (MAD), the Market in Financial Instruments Directive (MiFID) and the Regulation on over-the-counter derivatives, central counterparties and trade repositories (EMIR). The Commission published the draft proposals for MiFID and MAD in October; each of these will be negotiated over the course of the next year or so. All Member States outlined that it would be important for the package of instruments to complement each other, once finally adopted.

Otherwise, there could be excessive burdens on industry and regulatory authorities through duplication of reporting, monitoring and enforcement, an ineffective regulatory regime which does not close the regulatory gaps, and possibly other unintended consequences. The Commission and Presidency made textual amendments to avoid duplication of reporting and allow the updating of definitions in REMIT. This was difficult to achieve as this Regulation was the first to be agreed. DECC and HMT officials will endeavour to ensure that the renegotiation of the three existing pieces of legislation takes account of the obligations in REMIT.

The Regulation will enter into force 20 days following publication in the Official Journal of the European Union and we expect this to be before the end of 2011. Following entry into force it will now be necessary to ensure the successful implementation of the Regulation in the UK (Letter agreed by Charles Hendry but signed in his absence due to travel)
15 November 2011

Letter from the Chair to Charles Hendry

Thank you for your letter of 15 November, letting us know that political agreement was reached at the Environment Council on 10 October on a text of this proposal which satisfactorily meets the UK's main concerns.

Whilst we were grateful for this update, we do not think it raises any issues which affect the clearance we gave on 8 June, or which need to be reported further to the House.
7 December 2011

EM 13943/11: DRAFT DECISION SETTING UP AN INFORMATION EXCHANGE MECHANISM

Letter from Charles Hendry to the Chair

Further to your Committee's consideration of the above explanatory memorandum and your request for further information, I am writing to update you on the progress of negotiations on the proposal and to respond to the points you raised.

Negotiations of the Decision are still at an early stage and are expected to continue under the Danish Presidency in 2012. Whilst there is a clear consensus on the need for greater transparency among EU Member States, a number have expressed concern about the extent of possible ex ante assessment of agreements with third countries by the Commission. There is clearly a balance to be struck between ensuring that Member States retain their competences and having a mechanism that facilitates the role of the Commission in ensuring compliance with the EU rules. On the issue of the examination period (your reference to a 'four month standstill' period), which would give the
Commission sight of an agreement prior to its conclusion, this is still subject to negotiations.

The right of the Commission to be an observer in negotiations has been removed in a revised version of the text of the Decision although Member States retain the right to ask for the support of the Commission in their negotiations with third countries (as Poland did last year).
6 December 2011

Letter from the Chair to Charles Hendry

Thank you for your letter of 6 December, providing an update on the negotiations on this proposal.

Whilst we were grateful for this, we think that, before reporting further to the House, it would be sensible to await the letter which you have said you will send when there are any significant developments in the negotiations.
14 December 2011

DEPARTMENT OF ENERGY AND CLIMATE CHANGE

11892/09 COM (09) 363: PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL CONCERNING MEASURES TO SAFEGUARD SECURITY OF GAS SUPPLY AND REPEALING DIRECTIVE 2004/67/EC

Letter from Charles Hendry to the Chair

Further to my letter of 9 August to Lord Roper (copied to you) updating on progress on the Security of Gas Supply Regulation I can confirm that the European Parliament formally agreed a First Reading Deal on 21 September. The Regulation is now scheduled to be taken as an 'A' point (i.e. no discussion) in Council on 11 October.

Once the Regulation has been published in the EU Official Journal (this may take up to a month or so) it will be in force 20 days from that date so end November I early December remains the likely timing.

As advised previously the Regulation is not expected to be burdensome for the UK since the UK meets most of the obligations in the draft Regulation. For example, the UK comfortably meets the 'N-1' infrastructure standard (capacity of the network to meet winter demand for gas in the event of failure of the largest single piece of gas infrastructure) and the emergency stages mesh well with the UK's existing stages.

Nevertheless we shall ensure that we meet all the obligations and measures placed on Member States. We have a robust process in place for ensuring that the measures set out in the Regulation are implemented in the UK in a timely way, working with key delivery partners as necessary.
11 October 2010

Letter from the Chair to Charles Hendry

Thank you for your letter of 11 October, recording that a first reading deal has been reached on a text which is not expected to be burdensome for the UK, and that this was due to be taken as an A point at the Council on 11 October.

We were grateful for this update, and have noted the position.
27 October 2010

7094/10: Proposal for a Decision of the European Parliament and of the Council establishing a European Union action for the European Heritage Label.

Letter from John Penrose to the Chair

Thank you for your letter of 3 November responding to my update on negotiations on the draft Decision for a "European Heritage Label".

The Presidency will present a progress report on the ongoing Council negotiations on the draft Decision at the Culture Council on 18 November. The Belgians had hoped to adopt the Decision at the Council but this has not been possible as two issues remain under discussion, However, 'he CULT Committee of the European Parliament has voted on its report of the Commission's proposal which will now be considered in plenary. The plenary vote is scheduled to take place on 16 December and, once it has adopted a text, the Council will consider whether it can accept the text without amendment or adopt a Common position and enter into further negotiations leading, if necessary, to the second reading process in the Parliament. I am not in a position to give an indication of when agreement will be reached as there is no deadline by which the Council needs to adopt a Common position, but negotiations will continue under the Hungarian Presidency and it seems very likely that the Decision will, in due course, be adopted.

I should be pleased to provide the Committee with further information, particularly on the budgetary aspects, in the light of any discussions at the forthcoming Council and subsequent meetings of the Cultural Affairs Committee. Meanwhile, we continue to oppose the proposal that the 2013 budget for the action should come from the margin of the EU budget. I agree there is an important point of principle at stake and we do not propose to relax our stance on this.
18 November 2010

Letter from the Chair to John Penrose

Thank for your letter of 18 November. We have also seen your written Ministerial statement on the outcome of the November Education, Youth, Culture and Sport Council.

It is disappointing that little headway appears to have been made on the funding arrangements proposed for 2013. As I indicated in my last letter of 3 November, the Committee shares the Government's concern about drawing funds from the margins of the EU budget and agrees that there is an important point of principle at stake. We note your resolve to stand firm on this issue.

You say that the European Parliament is likely to vote on the Commission's proposal at its forthcoming plenary session but that agreement on the draft Council Decision is unlikely to be reached during the Belgian Presidency. I should be grateful if you would continue to provide the Committee with progress reports in light of the outcome of the EP's plenary vote and ongoing negotiations during the Hungarian Presidency. Meanwhile, the draft Decision remains under scrutiny.
15 December 2010

Negotiation of an agreement between the European Atomic Energy Community (Euratom) and the Government of the Republic of South Africa for cooperation in the peaceful uses of nuclear energy

Letter from Charles Hendry to the Chair for Information

I am writing to inform you of the agreement of a restricted negotiating mandate for an agreement between Euratom and the Republic of South Africa on the peaceful uses of atomic energy, which was agreed at the Council of Ministers on the 25th October 2010. The agreement covers the transfer of nuclear material and nuclear cooperation generally with South Africa.

The agreement follows the model of the Euratom - Australia negotiating mandate agreed in July this year (I wrote to inform you of the agreement in July 2010) and the Euratom- Canada mandate of 2008, which was the subject of an EM *(14350108)* submitted on 6 November 2008.

My officials will monitor the negotiations as they occur and will seek to update the Committees on any significant developments during the course of the negotiations
13 December 2010

EM 15770/10: Proposal for a Council Directive on the management of spent fuel and radioactive waste (32136)

Letter from Charles Hendry to the Chair

Thank you for your letter of 8 December 2010 regarding Explanatory Memorandum 15770/10 on the above-mentioned proposed Council Directive.

My officials are currently working on an Impact Assessment on the draft proposal, which we aim to provide to you early this year.

I note your comments regarding two earlier European Commission proposals (8990/03 and 12386/04) in

relation to this subject. My officials will raise your concerns with the Commission via the UK's Permanent Representation in Brussels.
7 January 2011

Proposed Council Directive (Euratom) on the Management of Spent Fuel and Radioactive Waste (EM 15770/10): draft for the Committee's Report dated 19th July 2011

Letter from Charles Hendry to the Chair

First I would like to thank the Committee for agreeing to lift its Scrutiny on the proposed Council Directive (Euratom} on the management of spent fuel and radioactive waste at its meeting on 19t July, The draft Directive was adopted by the Council on 19th July without discussion, and Member States will have until July 2013 to implement it. You may wish to be aware that in its Press Release following adoption, the Commission while welcoming the adoption of the proposal, reiterated that it had advocated a complete ban on exports and commented that its position had been supported by the European Parliament. The Commission also commented that it would be monitoring the progress made on building disposal facilities and the possible exports of radioactive waste. Secondly, in my letter of the 16th June, I indicated that my officials would raise with the Commission the issue relating to the two draft proposals - COM *20041526* revising COM *2003/32* (EMs *12386104* and *8990103* refer) - which have become obsolete now that the proposed Directive on the management of spent fuel and radioactive waste, and the Nuclear Safety Directive (20091711Euratom of 26 June 2009) have been adopted. I am writing to inform you that my officials have written to their counterparts in the Commission requesting that these draft proposals are withdrawn in accordance with the Commission's Better Regulation Strategy. We are expecting a response after the summer break and I will write to you again informing you of the outcome of these discussions as soon as I receive this information from my officials.
29 July 2011

Letter from the Chair to Charles Hendry

Thank you for your letter of 29 July, letting us know that this draft Directive was adopted by the Council on 19 July.

We were also pleased to see that your officials have now written to the Commission suggesting that the two earlier proposals in this area (8990/03 and 12386/04) might now be withdrawn as obsolete in accordance with its Better Regulation agenda. We note that you are expecting a response shortly, and we were grateful for your assurance that you would let us know what the Commission has to say.
7 September 2011

Council Directive 2011/70/Euratom establishing a Community framework for the safe and responsible management of spent fuel and radioactive waste of 19th July 2011

Letter from Charles Hendry to the Chair

Thank you for your letter of 7th September in regards to the adoption at Council of the above Directive and the Committee's request that the Commission considers withdrawing two earlier proposals in this area (8990/03 and 12386/04). In my letter of 29th July I indicated that my officials had written to the Commission and that I would write to you again informing you of the outcome of these discussions.

The Commission have agreed that these earlier proposals should be formally withdrawn as updated proposals have since been adopted. This should be done later this year. This action will be carried out under the Commission's formal procedure to withdraw obsolete proposals which is triggered once a year by the General Secretariat of the Commission for the Commission Services. The Member States will be notified of the withdrawal via the Council Atomic Questions Group and I will write to you again as soon as I receive this information from my officials.
11 October 2011

Letter from the Chair to Charles Hendry

Thank you for your letter of 11 October, confirming that the Commission has agreed that the two earlier proposals in this area (8990/03 and 12386/04) might now be withdrawn as obsolete in accordance with its Better Regulation agenda.

This is very welcome news, which we were delighted to note.
19 October 2011

Letter from Charles Hendry to the Chair

We look forward to receiving shortly your Impact Assessment on this proposal, and we would also be interested to learn in due course how the Commission responded to the suggestion that the two earlier proposals in this area (8990/03 and 12386/04) might now be withdrawn as obsolete in accordance with its Better Regulation agenda.
19 January 2011

HUNGARIAN PRESIDENCY – COUNCIL PRIORITIES

Letter from Charles Hendry to the Chair

I am writing to inform you of the energy and climate change issues we expect to be dealt with in the Council of Ministers under the Hungarian Presidency. The Hungarians have timetabled Energy Councils on 28 February and 10 June and an Informal Energy Council on 2/3 May. Issues where DECC takes the lead are also dealt with at the Environment Council. There will be Environment Councils on 14 March and 17 June and an Informal Environment Council on 24/26 March.

The main priorities on energy for the Hungarian Presidency involve taking forward work on:

• The Commission's 'Energy 2020' strategy and communication on infrastructure

 Priorities

• The proposed Regulation on energy market integrity and transparency (REMIT)

• The Energy Efficiency Action Plan

The Energy Council on 28 February will follow up work from the European Council on 4 February, which reached agreement on the need for further action on the internal energy market, infrastructure, energy efficiency, low carbon technologies and external energy relations. We expect the Council to agree more detailed conclusions on the 'Energy 2020' strategy and the Communication on infrastructure priorities, which were published in November.

Another priority for the Presidency is to reach agreement on the proposed Regulation on market integrity and transparency for wholesale electricity and gas markets, which is part of a package intended to strengthen the regulation of financial markets where justified and proportionate. There will be a progress report in February and the presidency is aiming for political agreement at the Council in June. My Department submitted an Explanatory Memorandum on the proposal in January. I and my officials will of course keep you informed of the progress of negotiations on this Regulation.

The Commission intends to publish an Energy Efficiency Action Plan in March with the aim of agreeing conclusions at the Energy Council in June.

The Informal Energy Council in March will focus on the 2050 Energy Roadmap, expected to be published in

the autumn, which will help shape the EU's drive towards a secure, competitive and sustainable low carbon economy by 2050. Follow-up discussions are planned for the Energy Council in June.

The Hungarian Presidency is aiming for agreement on the proposed Directive on the management of spent fuel and radioactive waste by the end of June. Discussions of the initial proposal began in November 2010 with the detailed negotiations commencing in January. My Department submitted an Explanatory Memorandum in November on the proposal, which is intended to establish a common EU framework on the long-term management of spent fuel and radioactive waste. I and my officials will keep you informed of the progress of negotiations on this Directive.

Other issues that may be taken forward under the Hungarian Presidency are:

• a recast of a Directive on basic safety standards in the field of radiological protection;

• a (possible) legislative proposal on a Community energy efficiency labelling programme for office equipment;

• a (possible) legislative proposal on the safely of offshore oil and gas activities.

Finally, we expect the Commission to publish a Commission communication on external energy relations policy by June and there will be a report on a number of external energy dialogues at the June Energy Council.

On climate change, the Presidency plans an exchange of views at the Environment Council on 14 March 10 assess the situation after the UNFCCC Conference of the Parties (COP16) meeting in Cancun.' There may also be agreement of conclusions on this topic. The Presidency also plans an exchange of views on the Commission communication on the low-carbon economy roadmap to 2050.

We are yet to receive any formal communication from the Hungarian Presidency on the topics for discussion at the Informal Meeting of EU Environment Ministers on *24/26* March but it seems likely that this will include a substantive discussion of the 2050 low-carbon economy roadmap, possibly to be followed by adoption of conclusions at the June Environment Council. There may also be an orientation debate on a mechanism for monitoring Community greenhouse gas emissions at the June Council.
15 February 2011

REGULATION ON ENERGY MARKET INTEGRITY AND TRANSPARENCY - IMPACT ASSESSMENT

Letter from Charles Hendry to the Chair

On 7 January I submitted an Explanatory Memorandum on the European Commission's proposal for a Regulation on Energy Market Integrity and Transparency. At the time I was unable to send the impact assessment which was not completed in time to accompany the Explanatory Memorandum. The Department promised to send the Committee a copy of the impact assessment once the UK negotiating position had been cleared by the European Affairs Committee.

Your Committee reported that it would hold the REMIT dossier under scrutiny and that it would consider the proposal further once the impact assessment had been received. I now have pleasure in enclosing a copy of the impact assessment.
The Hungarian Presidency ;s aiming for a first reading deal on the dossier by the summer which would involve political agreement being reached at the June Energy Council and a compromise text agreed with the European Parliament shortly after. This is a challenging deadline but appears to be possible.
9 May 2011

Letter from the Chair to Charles Hendry

We are interested to see the Impact Assessment attached to your letter of 9 May, and we note that the UK regards the Commission proposal in its present form as “unacceptable” and would prefer to see a measure incorporating a more limited definition of what constitutes market abuse, coupled with a reduced role for ACER, and a clear placing of enforcement responsibility on national authorities.

However, whilst it is helpful to have had this degree of clarification, you have not provided any assessment of whether your preferred option would be negotiable, and nor is it clear what the consequences would be if something akin to the Commission proposal were to be adopted in its present form. Consequently, I think that, before we seek to take a definitive view of the proposal, it would be helpful if you could elaborate further on these two points.
18 May 2011

Letter from Tim Yeo to the Chair

The European Scrutiny Committee has requested the opinion of the Energy and Climate Change Committee on two European documents: the Low Carbon Roadmap and the Energy Efficiency Plan 2011.

My Committee discussed this at its meeting, and has agreed the following note:

The EU Low Carbon Roadmap COM (2011) 112 final

We note that the plan suggested that the EU ETS would be critical in driving a wide range of low-carbon technologies into the market. At present, after hearing evidence on this matter in our Electricity Market Reform inquiry, we are not convinced that plans for EU ETS Phase III are robust enough to deliver real innovation incentives or major shifts in carbon emissions.

First, as we argued in our report on Emissions Performance Standards, the EU ETS target is not tight enough. The Committee welcomes the re-statement of the EU offer to move to a 30% carbon emissions reduction target for 2020 "under the right conditions". We support the UK Government's position of pushing the EU to agree to increase the target. However, we consider that the 25% reduction target proposed by the Roadmap would be an improvement on the current target. We also consider that the EU ETS would be strengthened and vulnerable industries safeguarded by the inclusion on imports in the system and would welcome further work on this from the Commission.

An important component of the Roadmap is the use of project credits (international offsets) as part of the EU's 2020 target. We would like to see more analysis of the availability and robustness of emissions offsets in the context of fragmented global action on climate change and the uncertain future of the Clean Development Mechanism.

The description of the most cost-efficient trajectory to decarbonisation in 2050 is also welcome, although we believe that the calculation is likely to differ between Member States. We note the large difference in GOP investments in low-carbon projects between the EU and developing states such as China and India, as highlighted by the Commission, and we are concerned that Europe should not fall behind in the development of low-carbon sectors. We would encourage the Commission to undertake the necessary work to coordinate investment and share costs for the shared infrastructure that will be needed to effect a low-carbon transition in Europe.

The Committee welcomes the implementation of the Commission's Strategic Energy Technology (SET) Plan to accelerate the development and deployment of cost-effective low-carbon technologies. However, we note that while shale gas has the potential to diversify and secure European energy supplies, if a significant amount enters the European market it will probably discourage investment in more expensive, but lower carbon, renewables. The Commission needs to acknowledge and manage this risk in its SET plan if the most efficient emissions reduction trajectories are to be followed.

The Energy Efficiency Plan 2011 COM (2011) 109

The Committee is supportive of the Commission's proposals to improve energy efficiency. Efficiency measures offer some of the most cost-effective options for climate change mitigation and improving energy security, but uptake is limited by lack of information and institutional inertia.

Before any steps are taken to introduce EU-wide rules on grid access for Combined Heat and Power (CHP) we would need to see full analysis of the efficiency of CHP compared to other technologies. We would also need to be convinced that the proposed priority access would fit into a well-functioning, liberalised energy market and complement the UK's Electricity Market Reform
plans, which will not be finalised until the end of 2011 at the earliest. We agree with the need to develop the market for energy services, but we would like to see more detail in the Commission's proposals for lists of Energy Service Companies (ESCOs) and how that would benefit the development of the industry. We are also concerned that there should be full scrutiny of any proposals for legal provisions setting out rules for sharing of the costs of energy efficiency between owners and tenants as we are aware that the home ownership/rental market may be very different in the UK from that of other EU Member States.

We would also welcome consideration for EU standards for Best Available Technology in new generation assets. However, these would need to be carefully justified against the backdrop of the EU ETS and the Industrial Emissions Directive. Best Available Technology standards can also lead to minimum efforts for compliance and a dynamic element would need to be considered. This may also be an extra layer of regulatory complexity if the Commission's other policies prove effective, especially considering the rapid technological developments that may take place in this sector. We agree that ideally energy efficiency would best be delivered by a combination of regulation, information and market incentives, creating value for energy savings through market mechanisms. However, in our experience, consumers do not always respond well to price signals or information campaigns for energy efficiency. Evidence in our Electricity Market Reform inquiry showed that the uptake of energy efficiency measures has not been as rapid as expected. We would have to see robust proof of the effectiveness of a new system before supporting the EU-wide introduction of an energy-saving obligation scheme.

We welcome the emphasis on consumer information in improving energy efficiency, including labelling and coordination of smart meters and grids. The Smart Cities and Smart Communities initiatives could play a valuable role in developing these technologies. However, the UK has already embarked on an ambitious programme for the roll-out of smart meters. The Government expects the mass rollout to start in early 2014 and to be completed in 2019. We believe that the EU's work should complement and draw on UK experience as a leader, rather than oblige us to follow a European timetable.
20 June 2011

Letter from the Chair to Tim Yeo

Thank you for your letter of 20 June, setting out your Committee's opinion on these two Commission Communications.

We considered these at our meeting today, and were grateful for the interesting and thoughtful insight they provided into these policy areas. As is customary with correspondence of this sort, we propose to publish your letter in the Report we shall be making to the House on today's meeting.
29 June 2011

Possible Commission implementing measure under Directive 98/70/EC for the calculation of the GHG emissions of fuels and other energy from fossil sources

Letter from Norman Baker to the Chair

I am writing to inform you of an expected implementing measure that may be of interest to your Committee. If the European Commission issues this proposal it is expected to be taken forward very quickly. We expect that it would be tabled and voted on in September, or early October 2011.

The possible proposal would take the form of delegated legislation under the Fuel Quality Directive (98/70/EC, as amended by Directive 2009/30/EC), referred to below as the "FQD". Directive 2009/30/EC amended the FQD both to introduce a mechanism to monitor and reduce greenhouse gas (GHG) emissions from petrol, diesel and gas-oil, and to change the specification for those fuels.

The major amendment introduced by Directive 2009/30/EC requires fuel and energy suppliers (principally those providing fuel and energy for land-based transport, and other non-road mobile machinery) to reduce the lifecycle GHG intensity of the fuel/energy they supply by 6% per unit of energy by 2020. A consultation on proposals on how to implement this in the UK closed in June 2011 and a summary of responses is being published imminently. The Government is considering the responses.

Annex IV to the FQD already includes a methodology to calculate GHG emissions from biofuels, and the European Commission is now required to put forward an implementing measure setting out how to calculate GHG emissions from fuels and other energy from fossil sources. This implementing measure will be adopted through the comitology process using qualified majority voting.

A key part of this methodology will be the GHG intensity factors assigned to particular fossil fuel feed stocks. In particular, the methodology will need to set out how upstream emissions are factored in. The European Commission has indicated that they are likely to propose setting a default value specifically for the GHG intensity of fuel derived from oil sands and oil shale because of the high upstream emissions associated with these fuels.

In practice this could mean that most fossil-derived fuels would be assigned one default value and oil sands or oil shale-derived fuels would be assigned a much higher one. The European Commission has stated that it hopes to then assign default values for other fuels with high associated GHG emissions, but that more research is necessary in order to set these default values. As such, the European Commission is likely to introduce review clauses enabling new default values to be adopted as more information becomes available.

Most oil sand derived crude oil comes from the large oil sands deposits in Canada. The Canadian Government would be likely to strongly oppose a proposal to set a default value for oil sand derived fuel. The evidence is that fuel derived from oil sands has a high GHG emissions intensity. However, this is also true for a number of other crude sources such as Nigerian and Angolan crude oil (with its associated flaring) and Venezuelan heavy crude oil. For environmental reasons, the Government would like to see a methodology that is able to account for the GHG emissions of all crudes, including oil sands and oil shale, and is based on robust and objective data.

Consequently, the Government is seeking an outcome that would split crude sources into three broad categories (e.g. low, medium and high) based on their lifecycle GHG emissions. We would also like to ensure that such a methodology is reviewed regularly as new evidence, technologies and processes become available.
8 September 2011

Letter from the Chair to Norman Baker

Thank you for your letter of 8 September, alerting us to the likelihood that the Commission will shortly put forward an implementing measure under the Fuel Quality Directive, and that this could then be taken forward very quickly.

We infer from what you say that, were such a proposal to be made, you would regard it as a depositable document - a view which we share - and, at that point, we would expect to scrutinise it in the normal way. However, the earliest we could now do so would be at our next meeting on 12 October, and it would obviously be preferable for all of us if any decision in Brussels were to be delayed until after that date. If that is not possible, we would in the circumstances be content to give you discretion to proceed as you see fit, subject to your keeping us in touch with developments.
14 September 2011

Proposed EU Regulations on Offshore Drilling

Letter from the Chair of Energy and Climate Change Committee

On 27 October the European Commission published details of a proposed Regulation on the safety of offshore oil arid gas prospection, exploration and production activities (COM (2011) 688). I understand that once DECC has produced an Explanatory Memorandum, setting out the position of the UK Government, the Commission's proposal will come before your Committee for formal scrutiny.

It *may* be helpful for you to be aware of my .Committee's recent report on UK Deepwater Drilling-implications of the Gulf of Mexico Oil Spill, in which we rejected calls for increased regulatory oversight from the European Commission. At the time the Government shared our concern that legislative proposals from the EU would diminish the effectiveness of our own and others' (e.g. Norway, Denmark and Netherlands) robust regimes.

We have had further correspondence with some of the witnesses to that inquiry, of Which I enclose copies. These raise concern that the proposed regulations risk creating instability and confusion and expense for UK industry and Government, with limited safety gain. It is possible that the Health and Safety Executive will have to undertake significant work to ensure its rules conform with the terms of the regulation.

We note that the UK regime is regarded as one of the best in the world and that Government should be as robust as possible minimising any negative impact on the UK regulatory framework, and to ensure that the proposals do not effectively lower UK regulatory standards.

If your Committee is minded to refer this matter for debate, I am sure that members of the Energy and Climate Change Committee would willingly participate.

UK Deepwater Drilling Inquiry

Memorandum from BP p.l.c. to the Energy & Climate Change Committee

18th November 2011

1. Our first impression is that there appears to be little significant in the *content* of the regulation which raises undue concern. The question as to whether the ED should be legislating in this area deserves consideration, but presumably this is a proper issue for HMO to raise and consider. For industry, it does raise the issue as to whether it would be more appropriate to make representations at a national or an ED level, assuming the regulation comes into force and should problems or the need for modifications arise in the future.
2. This is especially relevant to the issue of delegated powers under Article 34. We are concerned that these powers could theoretically, and perhaps in practice, be used in order to depart from the principle of a 'goal-setting' regime, which we strongly support and wish to see continue.
3. There are concerns in the industry that it is proposed that this should take the form of a Regulation rather than a Directive - however, in our view either can be prescriptive and for us the priority is to maintain a goal-setting approach under both legislative mechanisms and to avoid any need to undertake a major restructuring of the UKCS offshore HSE regime.
4. It appears also as if the Regulation may be proposing a split between licences for exploration and licences for operation. This will require clarification and could be a point of concern.
5. In summary, the following are the issues we have identified, and we continue to review all the implications.

• We wish to understand more precisely the concerns being expressed over the distinction between a Directive *and* Regulation and its potential impact on the goal setting regime which we strongly support
• We are certain that it will be important to ensure that proposed Regulation does not either require any major restructuring of UK offshore HSE regime or that the delegated powers under Article 34 are not such as to enable a departure from a goal setting regime now or at some point in the future.
• It will be important to ensure that the 'best endeavours' obligation for ED companies to apply ED standards worldwide does not give rise to unintended legal exposures.
• The implications of the proposed extension of Environmental Liability Directive up to 200 nautical miles limit will need careful consideration

Finally, we are aware that some of these concerns - and others we haven't mentioned of a constitutional nature - will be more properly the province of HMO to raise, rather than industry.
7 December 2011

Letter from the Chair to the Chair of the Energy and Climate Change Committee

Thank you for your letter of 7 December about the Commission's recent draft Regulation on the safety of offshore oil and gas activities

It was very helpful to be reminded of your Committee's Report on this subject at the beginning of the year, and of its firm rejection of increased oversight by the Commission. We were also interested to see the representations you had received from a number of organisations within the industry, one of which (Oil & Gas UK) has written direct to us.

When we considered this at our meeting today, we decided to recommend the document for debate in European Committee, and I agree that it would be very helpful if that debate could be informed by the expertise which Members of your Committee could bring to bear. In the meantime, our Report will drawn attention to your letter, and to the various comments in it and attached to it.
14 December 2011

Letter from Charles Hendry to the Chair

Thank you for your letter of 11 January asking for assurance that the Proposal for a Council Decision on the accession of the European Union to the Protocol for the Protection of the Mediterranean Sea (EM 16562/11) will have no effect on EU competence in this area and will not prejudice our stance on the draft Regulation on offshore oil and gas exploration.

The EU is already a contracting party to the OSPAR Convention governing the North East Atlantic, which covers the same policy areas as the Protocol. Equally, there is already EU internal legislation covering some areas which are addressed by the Protocol. As such, the EU already has competence in relation to some aspects of the Protocol. However, the Protocol also encompasses some areas in which Member States retain competence and we would therefore expect some or all Member States to be party to the Protocol as well. In line with this, some Member States have already indicated that they intend to accede to the Protocol. In view of the above, I am satisfied that the proposal for a Council Decision on the accession of the European Union to the Protocol will have no effect on EU competence in this area. We will of course need to monitor any legislative proposals to implement the Protocol to ensure those do not affect the balance of competence either. Finally, I am also satisfied that the above will not prejudice UK's proposed stance on the draft Regulation.
23 January 2012

Letter from the Chair to Charles Hendry

EU accession to Mediterranean Offshore Protocol (33326) 16562/11

Thank you for your letter of 23 January assuring us that the EU's Accession to this Offshore Protocol would not affect its competence in relation to the draft Regulation on offshore oil and gas exploration, or prejudice the UK's stance on that document.

We were grateful for that assurance, and have now cleared the Council Decision relating to that Accession.

1 February 2012

DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS

EXPLANATORY MEMORANDUM 8329/10 OF 8 APRIL 2010 CONCERNING A COMMISSION RECOMMENDATION AUTHORISING THE COMMISSION TO OPEN NEGOTIATIONS ON BEHALF OF THE EUROPEAN UNION FOR THE RENEWAL OF THE PROTOCOL TO THE FISHERIES PARTNERSHIP AGREEMENT WITH THE DEMOCRATIC REPUBLIC OF SAO TOME E PRINCIPE

Letter from Richard Benyon to the Chair

My predecessor wrote to you on 6 May to advise you that the above proposal went to Council during the election period. Therefore it was not possible for the Committees to see the proposal before it was agreed.

The letter advised you that the UK voted in favour of the proposal. However, after the letter was sent the decision was made to abstain from voting, to avoid resorting to the use of the Scrutiny Reserve Resolution.
25 May 2010

EXPLANATORY MEMORANDUM 8174/10 OF 30 MARCH 2010 CONCERNING A COMMISSION RECOMMENDATION AUTHORISING THE COMMISSION TO OPEN NEGOTIATIONS ON BEHALF OF THE EUROPEAN UNION FOR THE RENEWAL OF THE PROTOCOL TO THE FISHERIES PARTNERSHIP AGREEMENT WITH THE FEDERATED STATES OF MICRONESIA

My predecessor wrote to you on 6 May to advise you that the above proposal went to Council during the election period. Therefore it was not possible for the Committees to see the proposal before it was agreed.

The letter advised you that the UK voted in favour of the proposal. However, after the letter was sent the decision was made to abstain from voting, to avoid resorting to the use of the Scrutiny Reserve Resolution.
25 May 2010

Letter from the Chair to Richard Benyon

Thank you for your letters of 25 May and 16 June, indicating how the UK responded in the Council to these documents seeking Commission negotiating mandates for the renewal of these three Fisheries Partnership Agreements. This is simply to say that, given the circumstances, and the nature of these documents, we have no objection to the course of action taken.
8 September 2010

EM 11216/09: NON-COMMERCIAL MOVEMENT OF PET ANIMALS

Letter from Jim Fitzpatrick to the Chair

Thank you for your letter of 24 March, concerning the non-commercial movement of pets. The presumption in law is that we will harmonise with the European rules at the end of December 2011 (in the same way that previously we were set to harmonise after June 2010). We are currently commissioning a specific risk assessment on rabies to determine whether harmonisation is an appropriate action to take. The results of this risk assessment, a planned public consultation and other evidence available from the European Food Safety Authority and elsewhere, will inform our longer term position. The rabies situation across the EU and in many other parts of the world has greatly improved over the last decade, and this could well give grounds for modification to UK rules, but we will need to demonstrate that any changes are appropriate and based on risk.

Additionally, the proposal regarding the extension also includes a clause allowing controls for 'other diseases' (i.e. diseases other than rabies including tick and tapeworm controls) to be introduced through the 'comitology' process, should an individual Member State provide sufficient evidence to justify this. We would be able to use this process to keep tick and tapeworm controls if we had the evidence and desire to do so. In addition to the work on rabies risk that we are commissioning, we are currently in the process of gathering some of the necessary evidence on tapeworm.
8 *April 2010*

Letter from the Chair to Richard Benyon

Prior to the General Election, Michael Connarty exchanged a number of letters with Jim Fitzpatrick, culminating in a letter which Jim wrote on 8 April, indicating the approach which was being taken to the question of what arrangements, if any, should apply in this area after the end of the transitional period in December 2011.

This is simply to say that we have noted the position, and would be grateful to kept informed of any significant developments.
8 September 2010

DRAFT INSTRUMENT 8658/10 OF 15 APRIL 2010 CONCERNING A PROPOSAL FOR A COUNCIL DECISION ON THE SIGNATURE, ON BEHALF OF THE EUROPEAN UNION, OF THE CONVENTION ON THE CONSERVATION AND MANAGEMENT OF HIGH SEAS FISHERY RESOURCES IN THE SOUTH PACIFIC OCEAN

Letter from Richard Benyon to the Chair

I am writing to advise you that this proposal will be going to Council shortly for adoption. Unfortunately it will be voted on before the Committees will reconvene following the election.

The proposal asks Member States to endorse the Commission's signature for the creation of the new South Pacific Regional Fisheries Management Organisation. As a strong supporter of the concept of Regional Fisheries Management Organisations (RFMOs) and their role in managing fisheries resources on coastal waters and on the high seas, it is important that we demonstrate our commitment to the improvement of existing RFMOs and the establishment 01 new ones by supporting this proposal, which will help 10 improve the management of fisheries resources in the South Pacific. Therefore we plan to vote in favour of the proposal.
9 June 2010

Letter from the Chair to Richard Benyon

Thank you for your letter of 9 June, indicating how the UK responded in the Council to this document proposing that the Commission should now sign this Convention on behalf of the EU.

This is simply to say that, given the circumstances, and the nature of the document, we have no objection to the course of action taken.
8 September 2010

EXPLANATORY MEMORANDUM 9553/10 CONCERNING A COMMISSION RECOMMENDATION AUTHORIZING THE COMMISSION TO OPEN NEGOTIATIONS ON BEHALF OF THE EUROPEAN UNION FOR THE RENEWAL OF THE PROTOCOL TO THE FISHERIES PARTNERSHIP AGREEMENT WITH SEYCHELLES

Letter from Richard Benyon to the Chair

I am writing to advise you that this proposal recently went to Council and unfortunately it was not possible for the Committees to see this proposal before it was agreed.

The purpose of the proposal was to formally open negotiations with Seychelles for agreeing a fisheries partnership agreement. It is important that negotiations commence to allow uninterrupted fishing operations for Community vessels. The UK does not have fishing opportunities under this agreement, but we did not wish to inconvenience other vessel owners with an interest in the fishery and thus voted in favour of the proposal.
16 June 2010

Letter from the Chair to Richard Benyon

Thank you for your letters of 25 May and 16 June, indicating how the UK responded in the Council to these documents seeking Commission negotiating mandates for the renewal of these three Fisheries Partnership Agreements.

This is simply to say that, given the circumstances, and the nature of these documents, we have no objection to the course of action taken.
8 September 2010

EXPLANATORY MEMORANDUM 5088/08: PROPOSED DIRECTIVE ON INDUSTRIAL Emissions (INTEGRATED POLLUTION PREVENTION AND CONTROL) (RECAST)

Letter from Lord Henley to the Chair

I write further to my predecessor's correspondence of 17 March 2010, which informed you of the adoption on 15 February 2010 of the European Council's position on the proposed Directive on industrial emissions (integrated pollution prevention and control) (recast). I am writing to update you on progress.

In early May, the European Parliament Environment Committee voted through a package of 76 proposed amendments to the Council position. These formed the basis of informal "trilogue" discussions between the Council, the European Parliament and the European Commission, with the aim of exploring the possibility of an agreement at second reading. At the third of these meetings, on 16 June, negotiators for the European Parliament and the Council arrived at a smaller package of amendments that would be put to both institutions as a basis for agreement. The European Parliament is due to vote on this package at the plenary session during the week beginning 4 July 2010. If endorsed by the European Parliament, the Council will aim to agree to this package in the autumn. In this case, we expect the Directive to enter into force towards the end of 2010.

The UK fully supported the Council position and the amendments proposed as part of the package mentioned above make few significant changes to it. In particular, the main concessions secured by the UK in Council, including on large combustion plants and the role of best available techniques (BAT) in permitting, have been largely maintained. The Government can therefore fully accept the package of amendments. I append to this letter a tabulation of the more significant changes, some 01 which provide quite helpful clarification. I shall write to you again in early July when the outcome 01 the European Parliament's vote is known.
28 June 2010

EXPLANATORY MEMORANDUM 5088/08: PROPOSED DIRECTIVE ON INDUSTRIAL EMISSIONS (INTEGRATED POLLUTION PREVENTION AND CONTROL) (RECAST)

Letter from Lord Henley to the Chair

I am writing further to my letter of 28 June, in which I told you of the “trilogue" discussions about this proposal and the impending vote in the European Parliament.

I am pleased to inform you that on 7 July the Parliament voted overwhelmingly in favour of the package of amendments which had been agreed between negotiators at the last trilogue.

After final polishing by "jurists/linguists·, the text will go to the European Council this autumn, as anticipated in my previous letter.
20 July 2010

Letter from the Chair to Lord Henley

Thank you for your letters of 28 June and 20 July about the most recent developments on this proposal to recast the Directive on industrial emissions.

We have noted that the European Parliament has now voted in favour of the package agreed between negotiators from the Parliament, Council and Commission, and that the text will now go to the Council in the autumn.

However, whilst we are grateful for this update, we note that, in his letter of 17 March to Michael Connarty, Jim Fitzpatrick referred to a difference of view between the Council and Commission as to whether the legal base should be Article 290 or Article 291TFEU. We assume that this issue has now been resolved, but we would be interested to know the outcome of that discussion.
8 September 2010

EXPLANATORY MEMORANDUM 12686/09: PROPOSAL FOR A COUNCIL REGULATION ESTABLISHING A CATCH DOCUMENTATION PROGRAMME FOR BLUEFIN TUNA THUNNUS THYNNUS AND AMENDING REGULATION (EC) NO 1984/2003.

Letter from Richard Benyon to the Chairman

I am writing to give you an update on the progress of the above proposal which is expected to be given agreement at a first reading. This has followed a number of informal contacts between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for a second reading and conciliation. This followed the European Parliament's Committee on Fisheries' proposal for a number of amendments to the proposed regulation.

I attach as an annex the European Parliament's legislative resolution. It is expected that the Council should be able to approve the European Parliament's position so that the legislative wording can be adopted to fit accordingly.
5 July 2010

Letter from the Chair to Richard Benyon

Thank you for your letter of 5 July, drawing our attention to certain changes to this proposal which have been agreed by the Council, Commission and European Parliament as part of a first reading deal.

Although the proposal was cleared by the previous Committee on 14 October 2009 without a substantive report to the House, we were grateful for this update and have noted the position.
8 September 2010

14482108: PROPOSAL FOR A EUROPEAN PARLIAMENT AND COUNCIL REGULATION LAYING DOWN THE OBLIGATIONS OF OPERATORS WHO PLACE TIMBER AND TIMBER PRODUCTS ON THE MARKET

Letter from Jim Paice to the Chair

I would like to update you on progress made towards the agreement of an EU Regulation laying down the obligations of operators who place timber and timber products on the market - commonly called the timber Due Diligence Regulation, The Regulation aims to tackle the illegal timber trade by requiring operators first placing timber on the EU market to exercise due diligence to ensure that the timber has been legally harvested in the country of origin.

The European Council reached a common first reading position on 28 January of this year. The UK, Belgium, Denmark and Spain abstained from the vote on the grounds that it did not prohibit illegal timber from entering our market, and the Netherlands voted against. The dossier went forward to European Parliament, who adopted their amendments at Committee on 4 May.

Officials from the Commission, the European Parliament and the European Council negotiated a compromise agreement in June, and the European Parliament voted in favour of this agreement on 7 July. The document (which has not yet been made public) will be tidied up by lawyer linguists, before it is adopted in Council by Ministers after the summer recess.

This will give us a strong second reading deal which will prevent illegal timber from entering the EU market. The compromise position was reached following the inclusion of a prohibition on the first placing of illegal timber on the market - a UK priority. It also includes a traceability requirement for businesses down the supply chain that will allow enforcement agencies to track illegal timber back to the first placer and identify any weak entry points. Member States must put appropriate enforcement measures in place. We are committed to formalising this agreement in the autumn and to implementing this measure in the UK by the end of 2012 to fulfil our objective of eliminating illegal timber from our market.
19 July 2010

Letter from the Chair to Jim Paice

Thank you for your letter of 19 July, drawing out attention to the second reading deal between the Council, European Parliament and Commission on this proposal.

We have noted that this agreement is satisfactory so far as the UK is concerned, and, whilst we were grateful for this update, we do not think it need affect the clearance given by the previous Committee in October 2009.
8 September 2010

DRAFT INSTRUMENT 11060/10 OF 11 JUNE 2010 CONCERNING A PROPOSAL FOR A COUNCIL REGULATION AMENDING REGULATION (EU) NO. 53/2010 AS REGARDS CERTAIN FISHING OPPORTUNITIES FOR COD, REDFISH AND BJUEFIN TUNA AND EXCLUDING CERTAIN GROUPS OF VESSELS FROM THE FISHING EFFORT REGIME LAID DOWN IN CHAPTER III OF REGULATION (EC) NO 1342/2008

Letter from Richard Benyon to the Chair

I am writing to advise you that this proposal is likely to be on the agenda for adoption at council on 26th July. The UK intends to vote in favour of the proposal which has yet to clear scrutiny as the Commons Committee

has not reconvened following the election. It is, however, worth noting that the EM has been cleared through the House of Lords.

The UK has been actively involved in negotiations at RFMO (regional fisheries management organisation) level. The UK has an interest in the reopening of the NAFO cod fishery for which it has a quota. The UK also has a strong interest in the increased protection afforded to the blue fin tuna stock. It is therefore important that the proposal is adopted as soon as possible.
25 July 2010

Letter from Richard Benyon to the Chair

Draft Instrument 11951/10 01 7 July 2010 concerning a Proposal for a Council Regulation (EU) No .../... of [...J establishing the fishing opportunities for anchovy in the Bay of Biscay for the 2010-2011 fishing season and amendin9 Regulation (EU) No 53/2010

I am writing to advise you that this proposal is likely to be on the agenda for adoption at the General Affairs Council on 26 July. The UK intends to vote in favour of the proposal which has yet to clear scrutiny as the Commons Committee has not reconvened following the election. It is, however, worth noting that the EM has been cleared through the House of Lords.

Although the UK has no fishing interest in the stock, it is important that proposals such as this are approved quickly as to minimise disruption to industry.
25 July 2010

Letter from the Chairman to Richard Benyon

Thank you for your letters of 25 July, indicating that, although these two documents have not cleared scrutiny by this Committee, the UK intended to vote in favour of their adoption at the General Affairs Council on 26 July.

This is simply to say that, given the circumstances, and the nature of these documents, we have no objection to the course of action taken.
8 September 2010

EXPLANATORY MEMORANDUM 8977/09: EUROPEAN COMMISSION GREEN PAPER ON REFORM OF THE COMMON FISHERIES POLICY

Letter from Richard Benyon to the Chair

Further to recent statements on fisheries policy, I wanted to update Scrutiny Committees specifically on UK policy with regard to reform of the Common Fisheries Policy (CFP). Before describing the detail of our position in talks with other Member States and European institutions, I would like to emphasise my commitment to genuine, fundamental reform of the CFP.

The reform of the CFP provides a crucial opportunity to overhaul the way in which fisheries are managed in the EU, and the UK has a key role to play in leading reform. We share the Commission's ambition for radical reform to achieve healthy fish stocks, a prosperous fishing industry and a healthy marine environment. We must do this in a way that overcomes the serious failings of the current CFP, removing ineffective micro-management and enabling those closest to fisheries to plan for the long term and take responsibility for sustainable fishing operations.

UK Government position

First, we must get rid of unnecessary and over-detailed regulation, with genuinely simplified and decentralised decision making. We need to move away from the current centralised system that attempts to micro-manage fishermen's daily activities. Any changes must be compatible with the Treaties, but a more rational approach can be maintained within this framework. We want to see day-to-day management devolved to those closest to the fisheries, including fishermen themselves. Science and other evidence must play a central, and transparent, role in every stage of this process. The reform process needs to achieve this without creating another layer of unnecessary bureaucracy. Second, the reform process needs to replace the rigidity of our current quota and effort management rules. The current inflexible system is producing high levels of discards; an inability to see beyond the short-term; and ever-increasing bureaucracy. A way must be found to manage mixed fisheries more imaginatively, and fishermen must be helped to take responsibility for good fisheries management.

This means giving fishermen greater ownership of their own destiny. We are in favour of granting them a clearer entitlement to fish: perhaps through a system of credits or user rights that would enable them to plan for the longer term and manage their fishing opportunities more flexibly. Such a system must not undermine the benefits of Relative Stability by transferring rights between Member States, but should allow fishermen to voluntarily transfer rights among themselves within a single Member State.

Third, we recognise the social and cultural importance of fishing, particularly to more remote coastal communities which may need help to adapt and innovate. This can be done within a single CFP regime which can provide safeguards, for example to help small fishing businesses adapt and prosper, to protect some sectors of the industry from predatory competitors, or to help with the transition to new management systems. We do not therefore see a case for fleet differentiation and we are concerned that arbitrary definitions for differentiation will prove unworkable and only encourage perverse incentives, or "threshold effects" which we have seen under the current system.

Fourth, CFP reform must reduce discards. Key to achieving this must be a binding obligation on Member States to account for all the discards made by their fleet. We have to be held to account for the amount of fish our vessels take from the sea, not for the amount that is actually landed. A reformed CFP must provide the incentives and regulatory framework to enable us to catch less but land more. The UK's trials of a "catch quota" approach is testing the effectiveness of moving away from existing landing-based quota limits that encourage the economic and environmental waste of discards.

Fifth, we must also have greater integration of fisheries with other marine policies. Fisheries has tended to be seen as somehow separate from what else goes on in our seas. With increasing and competing pressure for the use of maritime resources, for example from renewable energy, the CFP needs to be aligned with other marine objectives, particularly those in the Marine Strategy Framework Directive.

I am also keen that CFP reform should help improve global fisheries management, for example through the EU's Fisheries Partnership Agreements, building capacity for improved fisheries management and enforcement in a way consistent with wider development aims, rather than simply exporting overcapacity to developing countries.

The European Commission has committed to submit a draft legislative proposal to the European Council and Parliament during 2011. A great deal of detailed policy development and negotiation at the European level lays ahead, with EU conferences and workshops on reform scheduled for the autumn, while my officials will be working behind the scenes with the Commission to influence their thinking. I will ensure that you are kept up to date with progress as talks continue.
31 August 2010

Letter from the Chair to Richard Benyon

Thank you for your letter of 31 August outlining the Government‘s position on the reform of the CFP.

The previous Committee did of course provide a Report to the House on this in June 2009, and the document was debated in European Committee on 2 November 2009. Consequently, whilst we were grateful for this information, we do not see any need for a further Report at this stage, particularly as we shall no doubt return

to the subject in some detail when the Commission puts forward its legislative proposals.
15 September 2010

EXPLANATORY MEMORANDUM 5088/08: PROPOSED DIRECTIVE ON INDUSTRIAL EMISSIONS (INTEGRATED POLLUTION PREVENTION AND CONTROL) (RECAST)

Letter from Lord Henley to the Chair

Thank you for your letter of 8 September. You ask about the previous difference in view between the Council and the Commission about the applicability of Articles 290 and 291 TFEU.

In discussions in early 2010 following the entry into force of the Lisbon Treaty, it was decided that Article 290 should apply to two provisions and Article 291 to four. The Council adopted its Position on 15 February 2010 on that basis. The text adopted by the European Parliament on 7 July maintains that position. Further detail of the provisions is set out in recitals to the 7 July text which I reproduce in the Annex to this letter.
26 September 2010

Letter from the Chair to Lord Henley

Thank you for your letter of 21 September about the previous difference of view between the Council and Commission over the use of Article 290 or Article 291TFEU as the legal base for this re-cast Directive.

We were grateful for this clarification and have noted the position.
13 October 2010

EXPLANATORY MEMORANDUM 14154/03: PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS

Letter from Lord Henley to the Chair

I am writing to update you on the above proposal, on which no further progress has been made since a predecessor, Elliot Morley, wrote to you on 12 October 2005. This Proposal, which concerns Access to Justice in relation to the Aarhus Convention, has clearly stalled in light of poor reception from Member States. It seems unlikely that the Proposal will make further progress; however, the Proposal has not formally been withdrawn. Should there be any developments on this Proposal I will of course let you know.
23 October 2010

Letter from the Chair to Lord Henley

Thank you for your letter of 23 October, letting us know that this proposal has stalled in the light of opposition from Member States, is unlikely to make further progress, but has not yet been formally withdrawn.

Whilst we are tempted to clear the proposal (and hence remove it from scrutiny), we have traditionally been reluctant to adopt such a course when a proposal is still on the stocks. It seems to us therefore that it would be helpful if you were to propose to the Commission that now would be an appropriate time for it to be formally withdrawn.
3 November 2010

EXPLANATORY MEMORANDUM 5088/08: PROPOSED DIRECTIVE ON INDUSTRIAL EMISSIONS (INTEGRATED POLLUTION PREVENTION AND CONTROL) (RECAST)

Letter from the Chair to Lord Henley

Further to my letters dated 20 July and 21 September, I am pleased to inform you that the European Council approved on 8 November the text of the industrial emissions Directive which was accepted by the European Parliament on 7 July, thus concluding the co-decision process which began with the European Commission's proposal in December 2007. The Directive is expected to be published in the *Official Journal* within the next two weeks or so and will enter force 20 days thereafter.
20 November 2010

EXPLANATORY MEMORANDUM 6172/08: EU PROPOSAL FOR A REGULATION ON THE PROVISION OF FOOD INFORMATION TO CONSUMERS (FOOD INFORMATION REGULATION)

Letter from Jim Paice to the Chair

Further to the Government‘s letter of 21 July 2010 following the European Parliament‘s first reading vote in June, I am writing to you to update you on this dossier. The Council has continued to consider the dossier, with political agreement now expected at the Health Council in December. In light of these discussions negotiating lines for the UK have been updated.

Country of Origin Labelling

Under current EU rules, country of origin labelling is voluntary except where its absence might mislead. The Commission proposal strengthened these rules by requiring food businesses who choose to make a voluntary origin declaration to give additional information on the place of birth, rearing and slaughter for meat, as well as information on the origin of primary ingredients in other foods – e.g. bacon labelled as produced in UK would also have to show the origin of the pork if imported (_Bacon produced in UK from Dutch pork‘). Amongst EU Member States there are a range of views on this issue with some favouring a mandatory approach, albeit for a variety of products, and others preferring the Commission‘s approach of requiring additional information where an origin claim is made. The European Parliament is advocating mandatory origin labelling on a number of foods including meat and single ingredient products, subject to a Commission report.

The UK supports improved origin labelling in line with the Coalition Government‘s commitment to honesty in food labelling and has been pressing for greater clarity around the rules. The Council is now close to agreement on extending mandatory origin information to fresh and frozen meat with a requirement for the Commission to develop detailed rules before this is implemented. For other foods, including meat and dairy products, the Commission will be tasked to produce a report on the feasibility of extending mandatory origin labelling. In the interim, where origin claims are made, such as produced in UK or British the origin of the primary ingredient will have to be given or an indication that the primary ingredient is not the same as the place of manufacture. Again detailed rules for implementation will be developed before the provision comes into effect. These provisions are acceptable to the UK.

Nutrition labelling

The Commission has proposed mandating nutrition labelling on most pre-packaged foods, which the UK supports. The majority of Member States and the European Parliament also support the principle of mandatory nutrition labelling.

The Commission‘s proposal would introduce mandatory front of pack (FOP) information for certain nutrients with percentage Guideline Daily Amounts (%GDA). Also included is a provision to allow Member States some flexibility to develop voluntary national schemes for additional ways of expressing and presenting the

nutritional information.

In the UK around 30,000 pre-packed food product lines voluntarily bear some form of FOP label, with information on five key nutrients (energy, fat, saturates, sugars and salt).

Opinion on the FOP nutrition labelling provisions is divided. The European Parliament would like to make it mandatory and favours declaration of energy (calories), fat, saturates, sugars and salt but is divided on the way this information should be provided. However, most Member States in Council would prefer a voluntary approach at this stage with a view to harmonisation in time.

The UK would like the Regulation to provide a framework for Member States to develop voluntary FOP nutrition labelling at a national level and supports a FOP labelling approach at EU level which includes % Guideline Daily Amount, for energy, fat, saturates, sugars and salt in presentations and formats endorsed by Member States. Some Member States have expressed concerns over the potential burden of a procedure requiring formal national endorsement of additional forms of expression and presentation of the nutrition information. The Council is therefore expected to allow a more liberal approach which would allow businesses to use approaches which have been proven to facilitate consumer understanding of the nutrition information as long as they are not misleading.

Labelling of alcoholic drinks

The Commission proposal introduced nutrition and ingredient listing for some alcoholic drinks while exempting beers, wines and spirits for five years pending a Commission review. The UK had concerns that this would lead to parts of the alcoholic drinks sector being treated differently e.g. cider being treated differently to beer. As such, we have pressed for a level playing field to avoid market distortions.

Views on labelling of nutrition and ingredient information on alcohol in the Council have been mixed. The European Parliament voted to exclude alcoholic drinks from these labelling requirements for five years. The UK supports ingredients listing on alcoholic drinks and has pressed for the Commission to undertake a review and report within five years on the practicalities of introducing this.

In relation to nutrition information on alcoholic drinks the UK supports the provision of an energy declaration and we have sought measures within the Regulation to ensure that industry can provide this information voluntarily in the meantime.

The position in Council now seems to be that most alcoholic drinks including wines, ciders, beers and spirits will be exempt from mandatory ingredient or nutrition labelling for five years pending a Commission report. However, certain alcoholic drinks, such as alcohols and other mixed alcoholic drinks, will be subject to the general rules thus requiring nutrition and ingredient labelling. The UK can accept this compromise.

Labelling rules for loose foods

The Government considers that the current legal framework allowing Member States to determine the rules for loose foods should continue. However, the importance of allergen information on foods sold loose is recognised and the UK supports the introduction of a requirement to provide this information. This is in line with views of other Member States in the Council and amendments put forward by the European Parliament. In the negotiations we have been seeking flexibility for Member States to decide how this information is provided so this can be done in a way that is meaningful for consumers. This has received support from other Member States and will also allow us to consider issues of enforcement at a national level before introducing any detailed requirements.

Next Steps

The dossier is still at first reading stage. The European Parliament‘s input into the first reading process is complete. The pace of discussions has increased under the Belgian Presidency and it is pushing for political agreement at Health Council on 7 December. A second reading is expected next year and negotiations on the proposal are likely to conclude mid 2011. The final regulation is expected to be adopted and published by

early 2012.
16 November 2010

Letter from the Chair to Jim Paice

We were grateful for this update, but, since the proposal was cleared by our predecessors on 14 January 2009, and the content of the draft Regulation does not appear to have changed that significantly since then, we see no need for a further Report to the House, particularly as the current text appears to be broadly acceptable to the UK.
8 December 2011

10457/10: PROPOSAL FOR A REGULATION AMENDING REGULATION (EC) NO 663/2009 ESTABLISHING A PROGRAMME TO AID ECONOMIC RECOVERY BY GRANTING COMMUNITY FINANCIAL ASSISTANCE TO PROJECTS IN THE FIELD OF ENERGY

Letter from Charles Hendry to the Chair

I am writing to inform you of a first reading agreement by the Council and the European Parliament on the Regulation on the European Energy Programme for Recovery (EEPR) and adoption of the legislative act at the Energy Council on 3 December.

I wrote to Lord Roper, copying to your Committee, on 27 July to provide more detail as requested by the Lords EU Select Committee and to update them on the progress of negotiations on the EEPR, which had begun shortly before. On 31 May, the Commission presented proposals for the reallocation of uncommitted funds from the original EEPR, as envisaged in an amendment to the original legislation proposed by the European Parliament. It proposed the creation of a dedicated financial instrument to support projects in the areas of energy efficiency and renewable energy. The fund would be open to public bodies, primarily at local and regional level, and entities working on their behalf. The Commission preliminarily estimated that an amount of around €114 million was available due to the failure of some projects, which had originally been allocated money when the EEPR was agreed in 2009, to progress. However, the Commission said that more money could become available if further projects failed to go ahead before the end of 2010. This would have meant that the final amount available to the fund would not have been pre-agreed with the Council and that the new mechanism would have absorbed all available decommitted funding from the original EEPR.

The original proposal contained limited detail on the operation of the fund. During negotiations, the Commission clarified that the intention was to use the unallocated money from the EEPR, in conjunction with money from the European Investment Bank (EIB), to leverage private finance. The proposed financing facility would offer a range of financial products (e.g. loans, bank guarantees etc), as well as a small amount of technical assistance.

During the negotiations, the UK argued in particular for the proposals to reflect the need for fiscal consolidation taking place in Europe, as well as the principles of sound financial management and transparency. In this context, the UK consistently pressed for a cap on the amount of money which could be allocated to the financial instrument and for reassurance that the proposal complied with the EU‘s Financial Regulation. I am pleased to report that the final agreement reached between the Council and the Parliament broadly met these objectives. In particular, the final sum being allocated to the facility was set definitively at €146.3m. While this represents an increase in the original estimate put forward, the cap will ensure that any further money which becomes available through the failure of projects from the original EEPR will not be available; and it reaffirms the important point of principle that such proposals for funding from the EU budget must be properly quantified.

In addition, the UK succeeded in getting amendments to the original proposal which introduce certain safeguards and a review clause. In accordance with the agreed text, the new facility will be reviewed by 30 June 2013 before decisions are taken by Ministers on its success (in particular in meeting its stated objectives of contributing to green growth, developing a competitive, connected, sustainable and green economy, protecting employment, creating jobs and tackling climate change) and possible continuation.

We understand that the Commission will now work with the EIB and others to set up the financial instrument, with a view to it being operational by spring next year. By using this EU money to leverage private finance, the Commission and EIB hope to be able to raise around €700m. Once in operation, the facility should be another useful source of funding for local and regional energy efficiency and renewables projects across Europe, including in the UK. It is therefore in line with the Government's objectives to support green growth not just at home, but also abroad.

The legislative act was adopted at the Energy Council on 3 December without discussion. We had expected the Commission to provide an update at the Council, and had therefore delayed replying to you, but in the event this did not take place.
20 December 2010

Letter from the Chair to Charles Hendry

Thank you for your letter of 20 December, drawing to our attention the final outcome on the proposal to use for energy efficiency and renewable energy initiatives any sums outstanding from the earlier proposal to establish a European Energy Programme for Recovery.

Whilst we have noted that the sum to be made available for these purposes has risen from €114 million to €146.3 million, it is — as you say – something of a relief that a cap on such expenditure has now been established. Having noted this, we do not think it need affect our earlier clearance of this proposal.
12 January 2010

EM 16068/10: Proposal for a Council Regulation fixing for 2011 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable to Community waters and, for Community vessels, in waters where catch limitations are required

EM 17003/10: Proposal for a Council Regulation fixing for 2011 the fishing opportunities for certain fish stocks applicable in the Black Sea

Letter from Richard Benyon to the Chair

I am writing to inform the Committee that the above proposals were adopted at the Agriculture and Fisheries Council on 13 and 14 December. Regrettably at the time of writing these had not completed clearance from the scrutiny process due to the timings involved. I am pleased, however, that the Committee had the opportunity to consider the main proposal on fishing opportunities in some detail and were able to comment in advance of the Council meeting, and for the issues to have featured in the annual Fisheries debate. I share the Committee's views on the Commission's timetable in bringing these proposals forward.

For the main fishing opportunities proposal listed above, at this stage my intent is simply to inform the Committee of its adoption, and confirm that a further communication to the Committees of both Houses will follow shortly providing full details and analysis of the final proposal adopted. To this end I have noted your points of continuing interest for possible further debate set out in your initial report of 8 December.

Turning to the second proposal listed above on the Black Sea, Ministers reached political agreement on the first day of the December Council, on the basis of a Presidency compromise, drawn up in agreement with the Commission. The Council invited the Commission to propose the establishment of minimum landing and mesh sizes for the turbot fishery in the Black Sea which had been specified in the original proposal, while underlining that the TAC levels established in the regulation for 2011 have been set at a level taking into account the continuous application of national provisions existing in Bulgaria and Romania, in this regard.

As noted in my related EM, the UK does not have fishing rights in the Black Sea and, as such, does not have a direct interest in this proposal. However, on a point of principle the UK supported the approach set out in the proposal on conservation grounds, and voted in favour.
16 December 2010

Letter from the Chair to Richard Benyon

Thank you for your letter about the outcome of the Council on 13-14 December.

We look forward to receiving the further information you have undertaken to provide on the first of these proposals. In the meantime, as you will probably know, we cleared the proposal relating to the Black Sea at our meeting on 15 December as not being of sufficient legal or political importance to warrant a substantive Report to the House.
12 January 2011

EXPLANATORY MEMORANDUM 17004/10: A PROPOSAL FOR A COUNCIL REGULATION ON FIXING FOR THE 2011 FISHING YEAR THE GUIDE PRICES AND COMMUNITY PRODUCER PRICES FOR CERTAIN FISHERY PRODUCTS PURSUANT TO REGULATION (EC) NO 104/2000

Letter from Richard Benyon to the Chair

I am writing in response to your letter of 8 December 2010, in which you agreed to clear EM 17004/10 from scrutiny. Thank you for your prompt clearance of this document.

Further to the points you raised regarding the timing of the Commission's submission of these proposals I would like to make clear that I also share your displeasure at the Commission's handling of this issue. Defra officials have taken this up with the Commission.
10 January 2011

Letter from the Chair to Richard Benyon

Thank you for your letter of 10 January, from which we were pleased to learn that your officials have taken up with the Commission the way in which this proposal was handled. We would be grateful to know in due course how they respond.
10 January 2011

ENVIRONMENT COUNCIL AGREEMENT ON A MANDATE FOR THE EUROPEAN COMMISSION TO NEGOTIATE A REVISED PROTOCOL ON HEAVY METALS ON BEHALF OF THE EUROPEAN UNION (12487/10)

Letter from Lord Henley to the Chair for Information

I am writing to inform the Committee of the recently agreed mandate for the European Commission to negotiate the revision of the 1998 Protocol on Heavy Metals on behalf of the EU and its Member States. The 1998 Protocol on Heavy Metals is a protocol to the 1979 UNECE Convention on Long-Range Transboundary Air Pollution.

The Protocol on Heavy Metals requires Parties to reduce emissions into the atmosphere of three metals (cadmium, lead and mercury) through the application of emission limit values and best available techniques for key source sectors and product control measures. In December 2009, the Executive Body to the Convention agreed to begin revision of the Protocol, with a view to adopting amendments to the Protocol in December 2011. The main priority of the revision is to make amendments that allow for increased ratification of the Protocol. Further potential revisions include the updating of emission limit values and changes to ensure consistency with other Protocols under the Convention.

The subject matter covered by the Protocol on Heavy Metals is already extensively covered by EU legislation. Major stationary sources of emissions of the three metals are subject to Directive 2008/1/EC concerning integrated pollution prevention and control. That Directive is founded on the application of best available techniques. Its provisions will be incorporated into, and strengthened by, the Industrial Emissions Directive which, as my letter of 20 November informed you, will enter force at the end of this year. On this basis, and citing Article 218 (3) of the Treaty on the Functioning of the European Union, the European Commission proposed a mandate in March 2010 to negotiate on behalf of the EU and its Member States on matters falling within Union competence. The mandate documents are classified as restricted and limited and therefore are not deposited for scrutiny.

The UK accepts that the European Union has competence in the policy areas covered by the Protocol on Heavy Metals. However, negotiations remain at an early stage with firm EU positions on many issues yet to be agreed. A limited mandate has therefore been granted that ties the Commission to negotiating in accordance with relevant EU legislation in force or with positions agreed by the Member States by consensus. The mandate has been granted for the duration of 2010 and 2011 and the Member States may review the content of the negotiating directives in Council at any point during that period and in any case after the 28th session of the Executive Body to the Convention in December 2010. It is expected that, as negotiations on revision of the Protocol on Heavy metals progress, it may be necessary to amend the mandate, in particular cover the addition of mercury-containing products to Annex VI to the Protocol.

I will write again to update the Committee should the mandate be amended.
13 January 2011

EXPLANATORY MEMORANDUM 9003109: PROPOSAL FOR A COUNCIL REGULATION ESTABLISHING A MULTI-ANNUAL PLAN FOR THE WESTERN STOCK OF ATLANTIC HORSE MACKEREL AND THE FISHERIES EXPLOITING THAT STOCK

EXPLANATORY MEMORANDUM 12548/09: PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ESTABLISHING A LONG-TERM PLAN FOR THE ANCHOVY STOCK IN THE BAY OF BISCAY AND THE FISHERIES EXPLOITING THAT STOCK

Letter from Richard Benyon to the Chair

I am writing to you concerning the above dossiers. Your Committee cleared the horse mackerel dossier from scrutiny on 10 September 2009. I am writing to update you on the progress with negotiations on this dossier following a first reading in plenary by the European Parliament on 22 November.

Also covered at that plenary was the above dossier relating to anchovy in the Bay of Biscay. The UK has no direct interest in this stock, with the TAC allocated exclusively to Spain and France, although we support the development of a long term management plan. 1 include mention of it here for completeness, as it is the other dossier affected by the impasse on the legal base (see below) in addition to the horse mackerel plan. All following discussion below on the legal issues applies equally to both, bearing in mind the issues raised have wider implications in agreeing the approach for the future development of all such plans.

Before moving on to those wider implications, I will briefly comment on the amendments suggested for the horse mackerel plan by the European Parliament. Most are entirely consistent with necessary changes to reflect post-Lisbon adjustments, and the advent of the updated Control Regulation. One persistent theme, however, has been to request references to be made within the plan to a need to differentiate between the industrial fishing fleets and the artisanal coastal fleets supplying high-quality fresh fish for human consumption. Related comments refer to 'splitting the TAC' to protect the separate interests.

Our UK view on this suggestion is that such references to different fleets (which are.. not, in any case, clearly

defined) are irrelevant for the purposes of this and other long term Management plans, which are intended to determine an appropriate harvesting level and manage the stock. Naturally, this includes supporting the interests of fisheries exploiting that stock, by aiming to ensure long term sustainable yields. But subsequent distribution of each Member States' qu.ota to their respective fleets and protecting their separate interests through that process, which is what these suggestions really relate to, is in practice carried out under separate domestic arrangements which are not part of the higher level objectives of the EU legislation. We continue to make this point, as a move to include such references will introduce unnecessary domestic interests and assertions within the plan which are not conducive to its aims, or relevant. Turning back to the wider implications, as previously noted, a significant faction of Member States has continued to oppose the Commission's proposal where the legal structure reflects the Lisbon Treaty inter-institutional full Go-decision arrangements. Their argument is that the harvest control rule fixes fishing opportunities, which Treaty amendments provide as a specific prerogative of Council (i.e. not for both Council and Parliament). The current Presidency has unsuccessfully sought to reach a compromise on this issue, including through the possibility of separating out parts of the management plan which could be left specifically to Council. One such Presidency compromise has been to suggest a variable range (between 70 and 80 thousand tonnes) for the annual 'minimal removal amount' which is a factor within the TAG harvesting rule calculation — to be determined by Council, thus providing them with a level of discretion to determine the fishing opportunities. This has already been mooted and rejected by Member States, however, primarily as it introduces an unscientific element into the all important harvesting rule, The Parliament subsequently advocated the approach as a suggested amendment, although at the first reading in November the Commission explained why this had been explored and rejected by Member States.

A solution that respects the Council's prerogative to set annual fishing opportunities, or provides a measure of discretion towards meeting that aim within the management plan, clearly is not straightforward. Our own UK position has been to support the Commission on the basis that the structure should safeguard the key element of long term management plans agreed by Council and Parliament, which would otherwise continue to be subject to annual political bargaining rather than following the science within an agreed long term strategy. We do, however, remain open to exploring solutions in a constructive way.

The Council was briefed on these issues by the Commission at the November Agriculture and Fisheries meeting. As a way forward, the Commission proposed trilateral meetings enabling the Council, the Commission and the European Parliament to discuss the procedural issues relating to these plans. I believe finding a way forward is crucial, as we see regionally developed long-term management plans as integral to future fisheries management and conservation, including under a reformed CFP. Now December Council is behind us, we await these proposed trilateral discussions in the new year with interest.
13 December 2010

Letter from the Chair Richard Benyon

I am sorry not to have replied before now to your letter of 21 December 2010, drawing to our attention two issues which have arisen on this proposal during negotiations with the European Parliament — the proposed split in the TAC between ―industrial‖ and artisanal catches, and the extent to which the European Parliament should be involved in the adoption of the Regulation. Whilst the previous Committee has already cleared this proposal, we would be interested to learn of any further developments as and when they occur.
2 February 2011

5177/11: RECOMMENDATION FROM THE COMMISSION TO THE COUNCIL TO AUTHORIZE THE COMMISSION TO OPEN NEGOTIATIONS ON BEHALF OF THE EUROPEAN UNION FOR THE RENEWAL OF THE PROTOCOL TO THE FISHERIES PARTNERSHIP AGREEMENT WITH MOZAMBIQUE

Letter from Richard Benyon to the Chair

I am writing to advise you that this proposal was approved at Agriculture and Fisheries Council on 21 February 2011. The document was restricted and therefore it was not possible to deposit the proposal for scrutiny. I have attached a copy of the proposal, reference number 5177/11, under the usual rules on confidentiality barring discussion of the document with others either inside or outside Parliament.

Fisheries Partnership Agreements are deals negotiated by the European Commission that agree access to fisheries resources for EU vessels in exchange for a financial contribution, or in exchange for other fishing opportunities in EU waters.

The purpose of the proposal was to formally open negotiations with Mozambique for agreeing a Fisheries Partnership Agreement. It is important that negotiations commence to allow uninterrupted fishing operations for Community vessels. The UK has two licences to fish under this agreement, and we did not wish to inconvenience these vessel owners or those from other Member States with an interest in the fishery, and thus voted in favour of the proposal.
5 April 2011

Letter from the Chair to Richard Benyon

You wrote to me on 7 March, drawing to our attention the fact that the Council had recently agreed to a recommendation that the Commission should open negotiations with a view to renewing the Fisheries Partnership Agreement with Mozambique.

In itself, that is not something on which we would see any need to comment, but our Clerk did raise with your officials the fact that the document had a limited classification, meaning that it could not be deposited, and that we would have been prevented, had we so wished, from discussing it with others. Quite apart from the lack of any obvious justification for such an approach, and the difficulty of reconciling it with the principle of open government, he also drew attention to the fact that we had earlier in the current Session considered a number of similar proposals relating to the extension of Fisheries Partnership Agreements with other third countries where no such restriction had been imposed.

We had hoped that your department would have been able to provide some explanation for this difference in approach, but we have now received your letter of 5 April, indicating that a similar restriction applies to the recommendation that there should be negotiations. to renew the Fisheries Partnership Agreement with Mauritania. We would therefore be interested to know whether this indicates that the Commission has now explicitly decided to apply a limite classification to all such documents, and if so how this can be justified given that the ED's negotiating objectives, which are essentially to promote sustainable and responsible fisheries, are expressed in very general and unexceptionable terms.
27 April 2011

EM *14046/10:* PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING COUNCIL DIRECTIVE *2001/1121EC* RELATING TO FRUIT JUICES AND CERTAIN SIMILAR PRODUCTS INTENDED FOR HUMAN CONSUMPTION

Letter from Jim Paice to the Chair

I am writing with reference to the above Explanatory Memorandum of 13 October 2010 relating to fruit juices which have been considered by your Committee. Your letter of 28 October 2010 indicated that you thought it unlikely that a substantive report to the House would be needed for this proposal, but that the Committee would like sight of the Impact Assessment before taking a final view. The Impact Assessment is in preparation and we are currently working with the industry to try establish costs based on the current proposal, but we envisage that overall these are likely to be fairly small as any potential relabeling costs will be limited to a small number of products offset by a long transition period and balanced by savings in other areas such as optional aroma restoration.

The Belgian and Hungarian Presidencies have moved very swiftly with this proposal since its publication in September. Two meetings have been held under the Belgian Presidency and good progress has been made towards reaching a common position. At the most recent meeting under the Hungarian Presidency, most Member States were supportive of the proposal, with only Germany voicing any concerns. As a result, the Hungarian Presidency has indicated their intention to submit a revised proposal to Coreper on 16 February 2011 prior to transmission to Council and the UK will be required to indicate whether it is in favour of the proposal.

Following the discussions at Council Working Group, the revised proposal has not changed significantly from the initial proposal put forward by the Commission in September 2010. The proposal remains very satisfactory to the UK and represents a good deal for UK industry while continuing to protect consumers. Importantly, it continues to reaffirm the distinction between fruit juice and fruit juice from concentrate, terms with which the consumer is now familiar. It also now permits the optional rather than mandatory restoration of aromas to juice, which is in force at present and is a significant win for the UK. The current directive is unclear about how much aroma needs to be restored and the UK along with other Member States have highlighted the difficulties in fully restoring aromas for certain juices because they are either not available in sufficient quantity or are of too poor quality to add back to a juice. Optional restoration provides legal clarity and also allows UK industry to continue to produce their "Value" brands where only certain aromas are added back for reasons of economy, competitive product pricing and consumer demand.

The UK's major trade association for producers of fruit juice, the British Soft Drinks Association (BSDA), has indicated the proposal to be largely acceptable to them and is very pleased with the current outcome. They remain concerned on only one aspect of the proposal - the fact they will no longer be able to make "no added sugar" claims on fruit juices.

This is because the proposal now prohibits the addition of sugar to fruit juice. This is in line with UK policy on reducing fat, sugar and salt intakes. The UK industry is supportive of prohibiting sugar as it is not common practice for industry to add sugar to fruit juice, and realistically only a few grapefruit products will be affected. However, by prohibiting sugar addition to all juices the use of a "no added sugar" claims will now infringe food labelling rules because it is not permissible to suggest that a foodstuff possesses special characteristics when in fact all similar foodstuffs possess such characteristics. Since the proposal is that all juices can no longer contain added sugar this would be a direct contradiction. The industry would like the UK to seek derogation, but the Government believes this would undermine the general principles of food labelling and could open the door to other such derogations.

No other Member State has any concerns about the loss of the ability to use this claim. A limited number of juices currently on the market which make use of the "no added sugar" claim will be affected and they will need to amend their labelling if this proposal goes through.

The proposal has yet to be considered by the European Parliament's Agriculture and Environment Committees. A rapporteur has been appointed and discussion is scheduled over the coming months.

I would therefore be grateful if you could indicate whether your Committee is content to provide scrutiny clearance for the UK Government to vote in favour of the fruit juice proposal at the forthcoming February Coreper meeting. If the Parliament proposes significant changes I will, of course, write to you again.
3 February 2011

Letter from the Chair to Jim Paice

Thank you for your letter of 3 February, asking us to provide scrutiny clearance for this proposal before the COREPER meeting on 16 February.

As you note, I did say in my letter of 20 October 2010 that, although we believed it unlikely that we would need to make a substantive Report to the House, we thought it would be sensible to receive your Impact Assessment before taking a final view, and ideally that remains the case: indeed, we would have expected the Government‘s own view to be informed by such an assessment. On the other hand, we note that you regard the proposal as satisfactory for the UK, that it has the support of the British Soft Drinks Association, and that you

envisage that the overall costs are likely to be fairly small and balanced by savings in other areas of the proposal. In view of this, we are—exceptionally—content for you to agree this proposal, notwithstanding the absence of an Impact Assessment.
9 February 2011

EM *14046/10:* PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING COUNCIL DIRECTIVE *2001/112/EC* RELATING TO FRUIT JUICES AND CERTAIN SIMILAR PRODUCTS INTENDED FOR HUMAN CONSUMPTION

Letter from Jim Paice to the Chair

Thank you for your letter of 9 February regarding the above proposal, responding to mine of 3 February, in which you explained you were content on this occasion for the UK to agree to this proposal notwithstanding the absence of an Impact Assessment. Despite the best efforts of the Hungarian Presidency it was not possible to vote on the proposal before the summer break. The proposal is currently at attaché level and the Polish Presidency will be looking to gain agreement in the autumn. Given that it is some months since you agreed to the UK position, I am writing to update your Committee on progress, and to ask that you reaffirm that you are content for us to vote in favour of the proposal, which is likely to go to Council later this year, probably in October or November.

Industry have indicated that based on the current proposal, overall costs are likely to be fairly small as any potential relabelling costs will be limited to a small number of products offset by a long transition period and balanced by savings in other areas such as optional aroma restoration. An impact assessment is in preparation.

The Polish Presidency has indicated that it will be aiming to reach a first reading deal with the European Parliament in September with an EP vote scheduled for the end of September. The EP has put forward 26 amendments, most are fairly minor, and the most significant relating to labelling changes. In particular the EP want to retain "no added sugar" labelling but while legally this is not possible, the Presidency are keen to meet the EP half way and have put forward some compromise text to alert consumers to the fact that fruit juice will no longer have added sugar. If a first reading deal is reached it is likely that the proposal could be voted on at Agriculture Council in October or November. The position remains that most Member States are very supportive of the proposal, with only Germany voicing any concerns.

The proposal has not changed significantly since our previous correspondence in February, and the points that we raised in favour of the proposal remain valid. These include:

• That the proposal remains very satisfactory to the UK and represents a good deal for UK industry while continuing to protect consumers;
• That it continues to reaffirm the distinction between fruit juice and fruit juice from concentrate, terms with which the consumer is now familiar;
• That it now permits the optional rather than mandatory restoration of aromas to juice, which is in force at present and is a significant win for the UK;
• That the UK's major trade association for producers of fruit juice, the British Soft Drinks Association (BSDA), has indicated that it considers the proposal to be largely acceptable and is very pleased with the current outcome. It remains concerned on only one aspect of the proposal, which is the fact it will no longer be able to make "no added sugar" claims on fruit juices, as the proposal now prohibits the addition of sugar to fruit juice. However it is generally supportive of the Presidency's compromise text mentioned above.

Given that this proposal will most likely come before Council before the end of the year, I would be grateful if you could reaffirm that your Committee is content for us to vote in favour of this proposal. I will of course write to you in the event that there are any significant changes to the proposal in forthcoming negotiations; however it seems unlikely at this time that there will be major changes. I will also ensure the Impact Assessment, when ready, is forwarded to the committee.
29 August 2011

Letter from the Chair to Jim Paice

Thank you for your letter of 29 August.

Having been asked in February to agree that the UK should (despite the absence of scrutiny clearance) vote in favour of this proposal before the COREPER meeting on 16 February, we were somewhat surprised to learn that it has still not been agreed, and that you should now be asking for a similar dispensation against the possibility of the proposal coming before the Council before the end of the year.

As you know, we have made it clear from the outset that it would be preferable to receive an Impact Assessment before we take a firm view of the proposal (and indeed would have expected the Government's own position to be informed by such an Assessment). In view of this, we were surprised that the Assessment is still not available nearly a year after the proposal was first put forward, and we would like to know why there has been such a delay, and when we can expect to see it, since it would clearly resolve the whole scrutiny process if it could be made available to us before the Council meeting in question.
7 September 2011

EM *14046/10:* PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING COUNCIL DIRECTIVE *2001/112/EC* RELATING TO FRUIT JUICES AND CERTAIN SIMILAR PRODUCTS INTENDED FOR HUMAN CONSUMPTION

Letter from Jim Paice to the Chair

Thank you for your letter of 7 September regarding the above proposal, responding to mine of 29 August updating you on progress with this proposal. I now enclose the Impact Assessment and apologise for the length of time it has taken to provide this, This assessment takes the form of the new EU checklist for assessment of the impacts of EU proposals as outlined in Mark Prisk's letter of 22 July, I am also providing you with a further update on progress with this proposal. I would be grateful if you could urgently reaffirm that you are content for us to vote in favour of the proposal, which is likely .to go to Council in early November. A view is needed by 28 October if at all possible to enable the UK to indicate its intent at Coreper.

Industry has continued to be supportive of our position and the British Soft Drinks Association has indicated it is pleased with the way negotiations are progressing and the content of the current proposal. Industry has indicated that the proposal is likely to be cost neutral and any potential relabelling costs will be limited to a small number of products offset by a long transition period and balanced by savings in other areas such as optional aroma restoration.

The Polish Presidency remains hopeful of reaching a first reading deal with a European Parliament vote likely in November. Three trilogues have already taken place and only a small number of outstanding issues remain. The EP has been willing to compromise on most of its 26 amendments proposed, although one potential sticking point relates to the EP wanting to permit the addition of up to 10% mandarin juice to orange juice. The Commission and all MSs except Spain are firmly against this but this may prove to be a deal breaker. Compromise text from the Presidency to alert consumers to the fact that fruit juice will no longer have added sugar has been accepted and this will go some way to alleviating industry's concerns that they can no longer use "no added sugar" claims.

The proposal still remains very satisfactory to the UK after the discussion phase. It includes a number of UK priorities crucially permitting aromas which can be lost during processing to be optionally added back as necessary and preventing the addition of mandarin juice to orange juice without indicating this on the labelling. Importantly, it continues to reaffirm the distinction between "fruit juice" and "fruit juice from concentrate", terms with which the consumer is now familiar. It also removes sugar from the list of authorised ingredients that can be added to fruit juice, includes tomatoes in the list of fruits that can be used for fruit juice production and permits freezing as an authorised storage method. The UK's British Soft Drinks Association

has indicated the proposal is largely acceptable to them and provides them with legal clarity on aroma restoration.

Given that this proposal will most likely come before Council before the end of the year, I would be grateful If you could confirm urgently that your Committee Is content for us to vote in favour of this proposal. I will of course write to you in the event that there are any significant developments; however it seems unlikely at this time that there will be major changes.
17 October 2011

Letter from the Chair to Jim Paice

Thank you for your letter of 17 October, providing an update on the negotiations on this proposal together with an Impact Assessment.

In the light of this further information, we are now clearing the document without making a substantive Report to the House.
2 November 2011

EXPLANATORY MEMORANDUM *6172/08:* EU PROPOSAL FOR A REGULATION ONTHE PROVISION OF FOODS INFORMATION TO CONSUMERS ("FOOD INFORMATION REGULATION")

Letter from Jim Paice to the Chair

Further to my previous letter of 3 February 2011 and your clearance from scrutiny of this dossier, it was agreed that I would continue to update you on the progress on the proposed Regulation on the Provision of Food Information to Consumers.

The draft Regulation entered second reading in February this year. On the 19 April the ENVI Committee of the European Parliament voted on their proposed amendments providing the European Parliament's provisional view on the dossier. Since that time there has been 'trilogue' discussion between the European Parliament, Commission and Council (via the Presidency) to consider the European Parliament's amendments and to develop potential compromises. The final meeting was held on 14 June and resulted in a deal being proposed on the dossier in its entirety. The formal process for consideration and adoption of the agreement begins on 5 July when the European Parliament votes on the compromise agreement in its Plenary meeting. The Commission and Council have indicated provisional acceptance of the compromise agreement but, assuming the European Parliament adopts it unchanged, this will need to be formally agreed - probably in the autumn.

In light of the direction of discussions in Europe and the views of the European Parliament the UK EAC (European Affairs Committee) lines for the dossier were reviewed and refreshed to consider possible fallback positions. These lines were agreed by the EAC on 9 June 2011. A summary of the provisional agreement is outlined in the Annex.

In general the compromise second reading deal proposed, while not quite meeting all the UK objectives and preferences, does represent a good compromise. There has been much gained in the negotiations and the UK is in a strong position with most lines having been achieved, which in Defra, DH and UK Rep's assessment represents the best deal possible for the UK. Conciliation is unlikely to gain better outcomes on the key areas for the UK and presents real risks of losing important elements or the regulation as a whole failing. On this basis I have agreed to provisionally accept the proposed agreement.
4 July 2011

Letter from the Chair to Jim Paice

Thank you for your letter of 4 July, providing us with an indication of the latest state of play on these proposals following the recent "trilogue" discussions.

We were grateful for this update, but we see no need for a further Report to the House, given that the current text appears to be broadly acceptable to the UK, and that the proposal was cleared by our predecessors in January 2009.
6 July 2011

HUNGARIAN PRESIDENCY PRIORITIES FOR THE ENVIRONMENT, AGRICULTURE, FISHERIES AND ANIMAL HEALTH AND WELFARE

Letter from Caroline Spelman to the Chair for Information

Council Logistics
There are two Environment Councils and six Agriculture and Fisheries Councils scheduled to take place under the Hungarian Presidency of the EU, plus one informal meeting of
Ministers for each. The Councils will be chaired by Sándor Fazekas, Minister of Rural Development.

There are formal Environment Councils on 14 March (Brussels) and 17 June (Luxembourg) and the Informal Council will take place in Godollo, Budapest on 24-26 March focussing on water policy. Agriculture and Fisheries Councils are held monthly and those in January, April and June cover both fisheries and agriculture, the others agriculture only. The January Council lasted one day, the others will each take two days. Councils will take place in Brussels except for the June Council which will be held in Luxembourg. The Informal Agriculture Council will take place in Debrecen from 29-31 May.

Environment Council Work

Biodiversity – The Presidency will begin the process for the implementation of the commitments made at the Conference of the Parties to the Convention on Biodiversity in Nagoya, Japan in October 2010. The Commission is expected to finalise a post-2010 EU Biodiversity Strategy in April/May. The Presidency will take forward the debate in Council and aims to adopt conclusions on the Strategy.

Genetically Modified Organisms (GMOs) – The Commission published a new proposal for GMOs in July 2010 which aims to allow Member States national discretion on the restriction or prohibition of the cultivation of GMO products. There will be an exchange of views at the March Environment Council.

7th Environmental Action Programme – The Environment Council adopted Council conclusions in December 2010 calling for the Commission to propose a 7th Environmental Action Programme from 2012. The Commission is currently carrying out an assessment of the 6th EAP and is expected to adopt a communication setting out the results early in 2011. The Hungarian Presidency may include a discussion of the assessment on a Council agenda.

Seveso II Directive – A proposal for a new Directive on the control of major accident-hazards involving dangerous substances (the Seveso II Directive) was adopted by the Commission in December 2010. The new Directive will replace existing EU legislation in this area. The Presidency are aiming to reach agreement on this dossier at the June Environment Council but realise this may be optimistic.

Sustainable Development – The Commission are aiming to produce a Resource Efficient economy Roadmap in the second quarter of 2011. This is an action plan on a range of resource use, resource security and sustainable consumption themes and is one of the seven flagship initiatives under the Europe 2020 Strategy. An overarching Communication was published in January. The Presidency are aiming for an exchange of views on this issue at the March Council and may prepare conclusions at the June Environment Council, to influence the Roadmap if it is unpublished by then.

Waste Electrical and Electronic Equipment (WEEE) Directive – The Presidency will aim to make progress on the recast of the WEEE Directive and is looking to reach political agreement on the first reading at the March Environment council. The timing would enable a second reading to commence under the Polish Presidency in the second half of the year.

Water Policy - This will be the key theme for the Informal Environment Council in March. The Commission will publish a proposal for future water strategy a _Blue-print for the EU waters' in 2012 which will incorporate a review of the Water Framework Directive. Based on discussions at the Informal, the Presidency will aim for Council conclusions in June on a stock-take of existing EU legislation and extreme water phenomena (water scarcity and flooding).

Agriculture and Fisheries Council Work

Reform of the Common Agricultural Policy (CAP) – The Commission set out its initial proposals on the future CAP in November 2010. The Hungarian Presidency will prepare the ground for legislative proposals expected in the summer. Progress on CAP reform will be shaped by parallel discussions on the future of the Structural and Cohesion Funds (SCF) and the EU budget for 2014-2020. Letters on this will be sent shortly to the scrutiny Committees, as well as the EFRA Select Committee.

Reform of the Common Fisheries Policy (CFP) – The Commission are expected to release a draft regulatory proposal for a reformed Common Fisheries Policy during the summer of 2011 and we expect an initial discussion at the June Council.

Agriculture Product Quality package - A legislative package was proposed by the Commission in December comprising two proposals (a new Quality Regulation and an amended Single Common Market Organisation) and guidelines on certification schemes for agricultural products and foodstuffs and the use of protected food names as ingredients in processed products. The Commission will be holding discussions in EU working groups on the two legislative proposals.

Bee Health – The Commission presented a Communication clarifying the key issues related to bee health and actions they are taking, and intend to take, to address them. The intended measures are planned to take place over two years with negotiations being held in EU working groups on the Commission's proposed actions.

Bluetongue Disease – The Commission proposed, on 26 January, a Directive amendment regarding vaccination against bluetongue which will be considered by the Council in April.
Comitology – the full range of agriculture, animal health and fisheries legislation is in the process of being updated to reflect the new comitology provisions in the Treaty on the Functioning of the EU. A number of major proposals have already been adopted by the Commission: Single Payment Scheme, Rural Development and the Single Common Market Organisation; as well as some lesser proposals. Many of these are not merely recasts, but also contain substantive amendments to existing rules. In addition to the Lisbon alignment exercise, a new Regulation on Implementing Acts was agreed in first-reading at the European Plenary in December. The new rules will also need to be reflected in the full suite of agriculture, animal health and fisheries legislation.

The Dairy Sector – The Commission issued a proposal for the dairy sector in December which responds to issues raised at the High Level Group for Dairy. The proposal will aim to strengthen bargaining by producer organisations. The Presidency is aiming for political agreement in April.

Food Information – The Food Information Regulation for Consumers achieved political agreement in December. This co-decision dossier will act as a framework for general and nutritional labelling in the EU. The Hungarian Presidency is aiming to reach a second reading deal with the European Parliament on this issue.

Protection and Welfare of Animals – An independent evaluation of animal welfare policy was commissioned by DG Health and Consumer Policy (DG SANCO). It analysed the results of EU policy as compared to the objectives of the 2006-2010 EU Action Plan on Animal Welfare and considered whether

changes to the next Animal Welfare Strategy (2011-2015) are needed in terms of scope, structure and working practices. The consultants' report has been published and was presented to Member States on 17 January and wider stakeholders on 31 January. A response on the possible options for progress will be sent to the Commission by the end of February. The Commission will then develop the Strategy during 2011 and will aim to have it adopted in December 2011.
14 February 2011

EXPLANATORY MEMORANDUM 8653107: PROPOSAL FOR THE ESTABLISHMENT OF RESIDUE LIMITS OF PHARMACOLOGICALLY ACTIVE SUBSTANCES IN FOODSTUFFS OF ANIMAL ORIGIN AND REPEALING COUNCIL REGULATION 2377/90

Letter from Jim Paice to the Chair

I am writing further to previous correspondence to update you on progress regarding Explanatory Memorandum 8653/07. I am sorry to say that the memorandum sent by your Committee to Defra early in 2009 in response to Jane Kennedy's letter of 18 January 2009 to your predecessor did not reach officials. I have noted that you kept the proposal under scrutiny until receipt of an Impact Assessment on this largely deregulatory measure.

This proposal became Regulation 470/2009 of the European Parliament and of the Council, published on 6 May 2009. The annexes of the legislation it replaced - Council Regulation 2377/90 - were very helpfully rearranged into an alphabetical table of active substances and their Maximum Residue Limits in Commission Regulation 37/2010. A second table lists the substances which are specifically prohibited from inclusion in medicines for food – producing animals in the EU because no safe level can be set for their use.

The consultation we intended to undertake at the beginning of 2009 did not take place owing to a number of factors. Defra has considered whether to amend our Animals and Animal Products (Examination for Residues and Maximum Residue Limits) Regulations 1997 to reflect the introduction of the EU legislation, or whether it would be appropriate to carry out a consolidation of the domestic legislation at this point. We have opted for an amending 51 at this stage and expect to start consultation on this in March. Work is also starting on the more complicated task of consolidating the legislation.

Officials are assessing the progress of the measures contained in Regulation 470/2009 and will ask interested groups for their comments on these and a draft Impact Assessment. I will write to you and the Chairman of the Select Committee on the European Union at that point to explain progress in this area. There is a lot of activity planned by the Commission over the next two years in respect of other legislation affecting veterinary medicinal products and I will write to you again when the position is clearer on how these will be progressed.
24 February 2011

Letter from the Chair to Jim Paice

Thank you for your letter of 24 February.

I should first of all say that we were somewhat surprised by your reference to the previous Committee's "memorandum" not having reached officials, since its comments were contained in one of the regular weekly Committee Reports - HC 19-v (2008-09) - which your department should have been aware of.

More generally, of course, the handling of this proposal, both in Brussels and here in the UK, leaves a great deal to be desired, and, although we recognise that most of the shortcomings at this end arose under the previous Government, we note that it appears to be only now that a consultation is at. Last being carried out, more than two years after the original date set. Given the already unconscionable delay, we look forward to receiving the promised Impact Assessment at the earliest possible moment.
2 March 2011

EXPLANATORY MEMORANDUM 8653/07: PROPOSAL FOR THE ESTABLISHMENT OF RESIDUE LIMITS OF PHARMACOLOGICALLY ACTIVE SUBSTANCES IN FOODSTUFFS OF ANIMAL ORIGIN AND REPEALING COUNCIL REGULATION 2377/90

Letter from Jim Paice to the Chair

Thank you for your letter of 2 March in response to mine of 24 February updating you on progress regarding Explanatory Memorandum *8653/07.*

I apologise for my reference to officials not having received your Committee's report (HC 19v (2008-09)). As you rightly state, these reports are published and are publicly available.

You raise the point of why a consultation is only just now being carried out. As mentioned in Jane Kennedy's Supplementary Explanatory Memorandum of 8 December 2008, an initial four week consultation of interested organisations did not produce any information on potential costs or savings associated with the proposal, and so we did not immediately proceed to a full consultation. Owing to the very general nature of the initiatives to improve the availability of veterinary medicinal products for food producing animals contained in the Regulation we believe it will remain difficult for interest groups to assess their impact accurately. However, as indicated in my letter of 24 February, my officials will assess the progress of the measures contained in Regulation *470/2009* and ask interest groups for their comments on a draft Impact Assessment. In writing to those groups we will enclose a draft Impact Assessment which we will send to you as soon as the consultation documents are finalised.
24 March 2011

Letter from the Chair to Jim Paice

Thank you for your letter of 24 March.

Whilst the main purpose of my letter of 2 March was to register the need for us to receive the promised Impact Assessment as soon as possible, we were interested to have this further explanation of the delays which took place following the previous Committee's Report of28 January 2009. We now look forward to receiving that Assessment.
30 March 2011

Letter from the Chair to Jim Paice

Thank you for your letter of 5 April, providing more information about the differences of view between the Council and European Parliament on the cloning of farm animals.

As you say, these issues were touched on in letters we have received from Anne Milton (most recently on 1 April), and we have noted that the Commission now seems likely to bring forward two separate proposals, dealing respectively with animal cloning and novel foods.
4 May 2011

EM 8779/11 - Communication from the Commission to the Council concerning the European Union's participation in the Sixth Ministerial Conference on the Protection of Forests in Europe (Oslo, 14-16 June 2011).

Letter from Jim Paice to the Chair

I am writing in response to your letter of 11 May, and to update the Committee following the Agriculture Council on 17 May.

Firstly, I would like to inform the Committee that one decision under the above proposals was adopted at Agriculture Council. Regrettably at the time of writing the proposal had not completed clearance from the scrutiny process due to the timings involved.

I would also like to update the Committee in more detail on developments since my Explanatory Memorandum of 28 April. In light of continuing differences within the EU, the documents covering EU participation in the forthcoming Forest Europe conference were split into three to reflect the split of competence within the decision more accurately. As Defra officials advised the Clerk to your Committee on 11 May, the documents were divided as follows: (a) a decision on the Commission's participation in the non-legally binding decision "Forests 2020"; (b) a decision on the Commission's participation in the LBA decision; and (c) a decision on the Member State's participation in the LBA decision.

Decision (a) was adopted as an "A" point at Agriculture Council on 17 May. The UK voted in favour of this decision, which was in keeping with arrangements for EU participation in previous Forest Europe ministerial conferences.

At Agriculture Council, the UK government was unable to support decisions (b) or (c). Decision (b), relating to the Commission's participation, was decided by QMV and therefore the UK, although not isolated in its position, was unable to block the adoption of this decision. Decision (c), relating to the participation of the Member States, must be decided by consensus, and the UK was therefore able to block its adoption. The issue will now be referred back to Coreper for further work.

In light of your letter of 11 May, I would also like to take this opportunity to outline in more detail the implications should this situation remain unresolved. It is impractical at best to have an agreed EU position on Commission participation without corresponding agreement on the participation of Member States on areas of national competence. The content of the proposed LBA is yet to be finalised, but it is highly likely that it will cover areas of exclusive EU, shared exercised and national competence. This has the potential to create considerable practical difficulties for negotiations *sur place*, especially if agreement cannot be reached on decision (c) prior to the ministerial conference. In this case, the Commission could participate in discussions on the LBA decision on areas of exclusive EU competence while Member States would be able to participate on areas of national competence, but without a coordinated position. If an LBA were to be agreed, it is possible that the Commission would propose legislation to implement its provisions in the EU. This would go against the principle of subsidiary, given that forestry is a national competence. Our position is to continue to press for agreement that the Decision for the EU to participate in negotiations on an LBA should not affect the respective competences of the EU and its Member States.
23 May 2011

Letter from the Chair to Jim Paice

Thank you for your letter of 23 May, explaining the current state of play on this issue, and the implications of the Council's decision to agree that the Commission should participate in discussions within Forest Europe on a legally binding agreement.

As you suggest, the situation which has arisen is inherently unsatisfactory, but, given the decision regarding Commission participation was taken by a qualified majority, we accept that there was little or nothing the UK could have done to prevent it. Clearly, what happens now depends upon whether and when agreement is reached by the 40 countries involved, and then on the nature of any EU legislative measures the Commission may propose at that stage. In our view, the implications of all this are not sufficiently immediate or concerning to warrant a substantive Report to the House, and we are therefore content to clear the document.
8 June 2011

EXPLANATORY MEMORANDUM 9593/11: PROPOSAL FOR A COUNCIL REGULATION AMENDING COUNCIL REGULATION (EU) NO *57/2011* AS REGARDS FISHING OPPORTUNITIES FOR CERTAIN FISH STOCKS

EXPLANATORY MEMORANDUM *12599/11:* PROPOSAL FOR A COUNCIL REGULATION ESTABLISHING THE FISHING OPPORTUNITIES FOR ANCHOVY IN THE BAY OF BISCAY FOR THE *201112012* FISHING SEASON

Letter from Richard Benyon to the Chair

I am writing to inform the Committee that the above proposals have now been adopted at Council, the most recent one relating to anchovy at the Agriculture and Fisheries Council on 19 July, and the earlier one on fishing opportunities as an 'A' point at the Economic and Financial Affairs Council meeting on 20 June. Regrettably at the time of adoption neither had completed clearance from the scrutiny process due to the timings involved, although I should add we had no direct UK interest in the anchovy fishery in the Bay of Biscay.

As the UK parliamentary scrutiny process had not been completed in either case, the best course of action seemed to be for the UK to record an abstention on both occasions, and for the first proposal adopted in June, we submitted an accompanying statement explaining our action (please see attached Annex). This made a plea for the eight week principle to be observed for 'non-legislative acts', such as proposals on fishing opportunities, to allow for proper scrutiny by national parliaments.

This principle, according to the terms of the relevant protocol to the EU Treaties, does not apply to non-legislative acts. But in recognition of the importance of the scrutiny process, as all of our EU business on fishing opportunities falls into the category of 'non-legislative acts' and I am thinking particularly of the key decisions to be made for 2012 during the upcoming autumn Council negotiations - the adoption of these proposals seemed a timely opportunity to record such a plea now. While I recognise the practical necessity for rapid adoption on
occasions, I know the Committee shares my views on the Commission's timetable in bringing such proposals forward for consideration.
11 August 2011

Letter from the Chair to Richard Benyon

Thank you for your letter of 11 August, drawing to our attention to two items which it have been agreed recently in the Council.

One of these - document 9593111 - had in fact already received scrutiny clearance from us (on 22 June), and, since the UK has no direct interest in the anchovy fishery in the Bay of Biscay, we have today cleared this as not warranting a substantive Report to the House, and have no objection to the course of action taken at the Agriculture Council on 19 July.
7 September 2011

Common Fisheries Policy (CFP) Proposals - EU Scrutiny Committee query on Subsidiarity

Letter from Richard Benyon to the Chair

I am writing in response to the European Scrutiny Committee's comments on Explanatory Memoranda (EM) 12514/11, 12517/11, 12518/11 and 12519/11 (combined) on a draft proposal and reports relating to Council Regulation 237112002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy.

The Committee asked for additional information on Member State competence in the case of introducing Transferable Fishing Concessions (TFCs), with reference to a submission received by Client Earth on this issue. In response, the original position - as set out in the EM - is maintained. Article 5.3 of the Treaty on the Functioning of the European Union (TFEU) clearly states that the issue of subsidiary (the principle that the EU may only act
where the objectives of the proposal cannot be achieved by the Member States acting individually) does not apply in areas of exclusive Union competence which, as set out in Article 3.1(d) of the TFEU, includes 'the conservation of marine biological resources under the common fisheries policy'.

This means that the European Commission, under its right of initiative, was entitled to include the proposals for mandatory TFCs as a tool for the conservation of marine biological resources in the draft proposals that were issued in July.

Client Earth also suggest that the articles requiring the mandatory introduction of TFCs by Member States in the CFP proposals is prohibited by article 345 of the TFEU (which states that 'The Treaties shall in no way prejudice the rules in Member States governing the system of property ownership'). This argument cannot be maintained since the current proposals merely require Member States to limit the amount of fish that can be caught through a
system of TFCs - rather than defining individuals' property rights. Consequently, we are content that the current proposals do not infringe article 345.

Finally, on the issue of proportionality, Client Earth believe that TFCs are contrary to this principle based on the notion that TFCs exceed what is necessary for the Treaty to achieve its fisheries objectives. The UK does not support the mandatory introduction of TFCs in the way it is currently proposed. However, the Commission are, we believe, entitled to propose the use of TFCs as one way of managing fisheries in support of achieving the CFP objective of sustainable fisheries.
11 October 2011

Letter from the Chair to Richard Benyon

The Committee had before it today your letter of 11 October, responding to the points raised in its Report of 14 September, which gives rise to two points.

First, you will recall that we specifically asked to receive comments on the points raised by the organisation Client Earth in good time before our meeting on 12 October, since we wished to consider then whether these might have a bearing on whether the proposals comply with the principle of subsidiary, and hence whether a Reasoned Opinion should be issued in accordance with the procedures set out in the Protocol on subsidiary and proportionality.

Despite this very clear request, the letter we have received from you was not signed until 11 October, and did not reach us until just before mid-day on 12 October, barely two hours before the meeting at which we had intended to consider it. As a result, there is now no chance of a Reasoned Opinion being issued before the eight week deadline in the Protocol (which expires on 23 October). There has therefore been a lamentable failure on your part to meet your obligations to this Committee and to the House as a whole, and we would like you to explain how this came about.

In addition, there is one point of substance arising from your response. We note that this strongly contests the position taken by Client Earth, pointing out that the issue of subsidiary does not apply to areas of exclusive EU competence, which includes the conservation of marine biological resources under the CFP. However, this depends critically upon whether the purpose of transferable fishing concessions is indeed the conservation of marine resources, or whether it is geared more to fleet management, a point your letter does not address.

In particular, we note that they are introduced by the Commission in a section of its Communication headed “A future for fisheries and aquaculture industry and jobs”, suggesting an emphasis on issues which go beyond strict conservation. They are similarly referred to in the Commission’s explanatory memorandum to the draft Regulation under the heading of “Access to resources”, as distinct from “Conservation of marine biological resources”, and the description of their purpose:

“The introduction of a system of transferable fishing concessions will constitute a major driver for fleet capacity adjustment. The impact assessment has shown clear positive and significant contributions from such a system of transferable fishing concessions to eliminate over-capacity and to improve economic results of the fishing industry” might well indicate that they are not a tool for the conservation of marine biological resources, as your letter suggests.

You are no doubt aware that the exclusive competence granted to the EU over "conservation of marine resources" is an exception to the general rule that the CFP is an area of competence shared between the EU and its Member States. We would therefore be glad to have a more considered response to this important issue.

Would you please — without fail — send us a reply to these two points which we can consider at our next meeting on 26 October.
19 October 2011

Reform of the CFP (33023) 12519/11 (33027) 12514/11

Letter from Richard Benyon to the Chair

We spoke regarding issues around the legal basis for provisions in the Commission's proposals on reform of the Common Fisheries Policy.

First, I would like to apologise again that the detailed response on your additional questions did not arrive with you in time to be considered at your meeting on 12 October. Your Committee raised important issues of precedent and principle, which were also of a technical nature. My Department undertook to ensure the issues raised were properly assessed. This involved seeking legal advice and discussing this advice, and our position, with devolved administrations. Despite our efforts to do this as quickly as possible, the response was not finalised until the day of the meeting. I realise that did not allow the Committee sufficient time to consider the information before that day's meeting, and I apologise for that.

I fully recognise the important issues highlighted in your letter. I want to ensure I provide the Committee with a full and considered legal analysis to the points raised. As such, I would be grateful for confirmation that the Committee is willing to give us a few more days to provide a further response so that I can assure myself that the points raised have been thoroughly examined. I would hope that I can get back to you by the end of this week if that is acceptable.
24 October 2011

Reform of the CFP (33023) 12519/11 (33027) 12514/11

Letter from Richard Benyon to the Chair

We spoke regarding issues around the legal basis for provisions in the Commission's proposals on reform of the Common Fisheries Policy.

First, I would like to apologise again that the detailed response on your additional questions did not arrive with you in time to be considered at your meeting on 12 October. Your Committee raised important issues of precedent and principle, which were also of a technical nature. My Department undertook to ensure the issues raised were properly assessed. This involved seeking legal advice and discussing this advice, and our position, with devolved administrations. Despite our efforts to do this as quickly as possible, the response was not finalised until the day of the meeting. I realise that did not allow the Committee sufficient time to consider the information before that day's meeting, and I apologise for that.

I fully recognise the important issues highlighted in your letter. I want to ensure I provide the Committee with a full and considered legal analysis to the points raised. As such, I would be grateful for confirmation that the Committee is willing to give us a few more days to provide a further response so that I can assure myself that the points raised have been thoroughly examined. I would hope that I can get back to you by the end of this week if that is acceptable.
24 October 2011

EM 12516/11: PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE COMMON ORGANISATION OF THE MARKETS IN FISHERY AND AQUACULTURE PRODUCTS

Letter from Richard Benyon to the Chair

Thank you for sending the Commons' Report on EM 12516/11: Draft Regulation on the Common Organisation of the Markets in Fishery and Aquaculture Products. Firstly, I note that the Committee will not make a definitive decision on the Explanatory Memorandum until the wider Common Fisheries Policy impact assessment has been provided. However, as far as trade with third countries is concerned, officials have held formal discussions with the Commission and other Member States concerning the absence of this provision in the draft regulation.

The Commission wishes to simplify matters relating to trade with third countries and to make regulations regarding trade compliant with the provisions in the Treaty of Lisbon by proposing to join fisheries and aquaculture products into a new and separate regulation. This will simplify the legislation that covers trade for these products and provide a more streamlined regulation that is easier to follow.
24 October 2011

Letter from the Chair to Richard Benyon

Thank you for your letter of 24 October, explaining how trade with third countries will be dealt with in future.

We will refer to this in the substantive Report we will be making to the House once we have received the Impact Assessment you have said that you will be providing.
2 November 2011

5285/11 (Implementation of voluntary modulation of direct payments under the common agricultural policy)

Letter from Jim Paice to the Chair

On 13 September 2011, the European Parliament adopted an amendment to Council Regulation (EC) 378/2007 regarding the rules for the implementation of voluntary modulation of direct payments under the Common Agricultural Policy (CAP). This amendment was to align the voluntary modulation regulations with the Lisbon Treaty. We now expect the Regulation to be adopted at the Special Committee for Agriculture, and then submitted to the Agriculture and Fisheries Council for ratification in October.

In the Explanatory Memorandum dated 25 March 2011 we explained that while we were content that only implementing acts should be used for this regulation, we were concerned that the draft proposal would give other Member States the opportunity to discuss the associated draft measures at the Rural Development Committee. This was riot in the current Regulation and we were seeking to retain the provision, whereby the amounts are fixed by the Commission on the basis of applications from the UK, without the involvement of the Committee. The UK successfully negotiated the retention of the existing provision.
18 October 2011

Letter from the Chair to Jim Paice

Thank you for your letter of 18 October, letting us know that the UK has succeeded in ensuring that the annual rates of voluntary modulation applying in the UK will not be subject to examination by other Member States in the Rural Development Committee. We have noted — and welcome — this development.
9 November 2011

EM 13397/11 on Draft Regulation amending Council Regulation (EC) No *169812005* as regards certain provisions relating to financial management for certain Member States experiencing or threatened with serious difficulties with respect to their financial stability

Letter from Jim Paice to the Chair

I am writing to you regarding the Committee's report of 14 September on Explanatory Memorandum 13397/11. The Committee requested further information on the Commission's proposals and the implications for the Government's objectives for the EU budget for 2012. I note in your report that you had similar concerns regarding Explanatory Memorandum 13407/11 regarding the European Fisheries Funds (EFF). There are similarities between the two funds but they have also have their distinctions therefore the Fisheries Minister Richard Benyon will be writing to you in due course about the EFF.

On the Commission's proposals we have made it clear that the decisions made on this proposal should mirror - as far as possible - decisions on similar proposals for Social and Cohesion Funds (SCF) and the European Fisheries Fund (EFF). We believe that all three proposals should be viewed as a package. There are differences the key one for the Rural Development Regulation is that there is no retroactivity.

The UK's position was supported by Sweden, The Netherlands, Germany, France and Denmark at the 7 November Special Committee for Agriculture (SCA). As a result, we received informal indications that the Commission will be looking to amend their proposal.

Our position is that we consider this a temporary derogation from the existing co-financing rules and that it is only available for eligible Member States until the end of 31 December 2013, mirroring the SCF and EFF proposals. We have requested similar Commission and Council declarations on budgetary impact and co-financing in 2014-20 as appended to the SCF proposal.

We do not expect this to affect final negotiations on the 2012 EU budget, which are expected to conclude later this month. By ensuring that this is a temporary derogation and by limiting eligibility, we are working to reduce any possible increase in the EU budget as a result of this proposal. We have requested that the Commission, as part of its annual budget process next year, presents updated figures for spending in this area during 2012. The UK will work to ensure that any needs for extra funds are met via redeployment within the agreed 2012 EU budget.
15th November 2011

Letter from the Chair to Jim Paice

Thank you for your letter of 15 November, bringing us up to date on progress on this draft Regulation.

We were interested to note that events in Brussels appear to moving in the right direction, but we are also conscious that, as yet, there are only informal indications that the Commission may amend its proposal. Consequently, unless and until this is confirmed, we do not think it would be right for us to report further to the House, or to release the document from scrutiny.

On the other hand, we understand that the UK may come under pressure in the Council next week to sign up to a deal, and, notwithstanding the fact that the document remains uncleared, we would not want to prevent you from doing this if the Commission has by then come up with something which it acceptable
23 November 2011

EM 16456/08 (AFRICAN HORSE SICKNESS)

Letter from Jim Paice to the Chair

It has been over 18 months since Defra last updated your Committee on codification 16456/08(30225) African horse sickness.

The UK Permanent Representation to the EU recently confirmed that there have been no recent developments and that the proposal is still under suspension. I will write again if there are any further developments. In the meantime, I understand your Committee will continue to keep the proposal under scrutiny.
9 January 2012

Letter from the Chair to Jim Paice

Thank you for your letter of 9 January, noting that there have not been any further developments on this document since your department last wrote to us in March 2010.

Given the current impasse, it is a pity the Commission does not feel able to formally withdraw the proposal, but I can confirm that, whilst it still remains on the table, we do not feel able to strike it from the record.
18 January 2012

Letter from Caroline Spelman to the Chair

DANISH PRESIDENCY PRIORITIES FOR THE ENVIRONMENT, AGRICULTURE, FISHERIES AND ANIMAL HEALTH AND WELFARE

I am writing to provide you with an overview of the Danish EU Presidency's priorities over the coming months in terms of Defra's Council business. Denmark holds the six-month rotating Presidency of the EU Council of Ministers from 1 January until 30 June 2012.

Council Arrangements

There are two Environment Councils and six Agriculture and Fisheries Councils scheduled to take place under the Polish Presidency of the EU, plus one Informal Meeting of Ministers for each. The Environment Councils will be chaired by Ida Auken, Environment Minister, except for climate issues, which will be chaired by Martin Lidegaard, Minister for Climate, Energy and Buildings. The Agriculture and Fisheries Councils will be chaired by Mette Gjerskov, Minister for Agriculture, Fisheries and Food.

The formal Environment Councils will take place on 9 March (Brussels) and 11 June (Luxembourg), and the informal meeting will be held from 18-20 April in Horsens, Jutland in Denmark. Agriculture and Fisheries Councils will be held monthly, except in February. In June the Presidency has dates for two Councils, but whether both will go ahead is dependent on progress made on key dossiers. All the Agriculture and Fisheries Councils will cover both topics except for the January Council and the first June Council, which will both cover agriculture only. The January and the first of the June Councils are scheduled to last one day, while the other four are scheduled for two days each. The January, March and May Councils will take place in Brussels, with the remaining three being held in Luxembourg. The informal agriculture meeting will take place 3-5 June.

Environment Council Work

7th Environment Action Programme (EAP)- Since the early 1970s, a series of periodic EU Environmental Action Programmes have provided the broad framework for EU environment policy and legislative activity. The current (6th) EAP runs until July 2012. In the Danes' view, the 7th EAP should focus on the big themes of resource efficiency, biodiversity, climate adaptation, environment and health, and better implementation of EU environment legislation. The contents of the 7th EAP will be one of the priority topics discussed at the Informal Environment Council in April, and non-legislative Council Conclusions are scheduled for the Environment Council on 11 June.

Biodiversity – The Presidency will continue work connected to the implementation of the EU Biodiversity Strategy, which will also form a part of discussions on Rio+20 and the 7th EAP. There will be non-legislative

Council Conclusions prepared at the June Environment Council towards CBD COP 11 in Hyderabad in October 2012.

Biodiversity: Access and Benefits Sharing (ABS) – Early Access and Benefit Sharing of genetic resources (ABS) is the third aim of the Convention on Biological Diversity (CBD), and was adopted via the Nagoya Protocol at CBD COP 10. Parties to the Protocol will have to implement measures to provide greater clarity to both providers and users of genetic resources. There will be non-legislative Council Conclusions prepared at the June Environment Council towards CBD COP 11, and possibly COPMOP 1 of the Nagoya Protocol in Hyderabad in October 2012.

Genetically Modified Organisms (GMOs) – The current main EU proposal on GM is the National Decision Making proposal that would allow Member States to ban cultivation of GM crops in their own territory on grounds other than health or environmental safety. However, a large Blocking Minority including the UK, France, Germany and Spain is currently preventing a deal. There will be an attempt to find legislative Political Agreement on GMOs at the Environment Council in March.

Indirect Land Use Change (ILUC) - There are concerns that biofuel use has produced significant unreported CO_2 emissions due to land use change to produce biofuel crops. The Commission is expected to come forward with a proposal, in early 2012, to amend the Fuels Quality Directive (FQD) and Renewable Energy Directive (RED) to address these concerns. There will be a legislative Orientation Debate on ILUC at March Environment Council.

LIFE - LIFE Regulation for 2014-2020 is a continuation of the EU financial instrument on the environment. It has an increased emphasis on climate action, with two discrete sub programmes proposed for the Environment and Climate Action, each with a dedicated budget. There will be a legislative Orientation Debate at the March Environment Council, before an attempt to reach a legislative Partial General Approach at the June Council.

Mercury Convention – Mercury is widely recognized as a chemical of global environmental and health concern. There will be non-legislative Council Conclusions prepared at the June Environment Council towards the fourth Intergovernmental Negotiating Committee, from 26 June to 2 July 2012 in Uruguay.

Preparations for Rio+20 - Brazil will host the UN Conference on Sustainable Development (Rio+20) from 4 to 6 June 2012. The conference will mark the 20th anniversary of the original Rio Earth Summit in 1992. Rio+20 will focus on two themes: green economy for sustainable development and poverty eradication; and, institutional reform for sustainable development. Rio will feature at both formal Environment Councils – non-legislative Council Conclusions at the March Council, and Information from the Presidency at the June Council – as well as being one of the priority topics discussed at the Informal Environment Council in April.

Priority Substance in Water – The Directive on Priority Substances will replace Annex X of the Water Framework Directive. It deals with both *Priority Substances* (which are of recognised concern - Member States must reduce the concentration of these substances in their water), and *Priority Hazard Substances*, which Member States must cease emitting, and which must be phased out entirely from the water supply within twenty years. Legislative Political Agreement on this dossier has been scheduled for the June Environment Council.

Sulphur content of marine fuels – The aim is to reduce sulphur content of marine fuels, via a proposal to align EU legislation with new international standards which are redrafted in Annex IV of the MARPOL Convention – 'The International Convention for the Prevention of Pollution from Ships'. There will be an attempt to reach legislative Political Agreement at the June Environment council.

Strategic Approach to International Chemical Management (SAICM) – It is a voluntary policy framework to promote chemical safety around the world and has as its overall objective the achievement of

sound management of chemicals throughout their life cycle. There will be non-legislative Council Conclusions prepared at the June Environment Council towards the third session of the International Conference on Chemicals Management (ICCM3), in Nairobi, Kenya, 17-21 September 2012.

Agriculture and Fisheries Work

Reform of the Common Agricultural Policy (CAP) - Following the publication of the Commission's proposals for the CAP post-2013 on 12 October 2011, the Danish Presidency will undertake a full programme of Agriculture Council discussion on the proposals, with the aim of producing a CAP report at the end of June identifying the key political questions and setting out the position of EU Member States. The Multi-Annual Financial Framework (MFF) is highly unlikely to be concluded during the Danish presidency, and thus final decisions on CAP post 2013 cannot be expected before the end of 2012. Legislative Orientation Debates are expected on different aspects of the CAP reform package of proposals (direct payments, financing, Common Organisation of the Market, Rural Development) at every Council up to the June Councils. At the June Councils the Presidency will look to produce a legislative Progress Reports defining the key political questions and the position of Member States.

Reform of the Common Fisheries Policy (CFP) - The Common Fisheries Policy is the EU's instrument for the management of fisheries and aquaculture. A draft legislative proposal for a new CFP was published on 13 July 2011, with the final element published on 2 December 2011. Formal negotiations began in September 2011, with the European Parliament and Fisheries Council expected to agree first common positions in the middle of next year. There will be legislative Orientation Debates on the CFP at the March, April and May Councils, leading up to the agreement of legislative General Approaches on the various sections of the CFP at the second June Council.

Animal Welfare Strategy and Animal Protection during transport – The Commission issued a report on implementation of Council Regulation (EC) 1/2005 on 10 November 2011, which concluded that although in general terms the welfare of animals during transport has improved since its introduction, 'severe animal welfare problems during transport still persist'. The report also acknowledges that there are wide variances in the degree to which the legislation is enforced in Member States. The Commission's wider strategy on Animal Welfare will be presented at the January Council and developed in working groups throughout the course of the Presidency, with the aim of reaching formal Council Conclusions at the second of the June Councils.

31 January 2012

Letter from Richard Benyon to the Chair

Explanatory Memorandum 9003/09: Proposal for a Council Regulation establishing a multi-annual plan for the western stock of Atlantic horse mackerel and the fisheries exploiting that stock

I am writing to provide an update on the political impasse affecting the development of long term management plans, which is exemplified in the above dossier, for no other reason than it was amongst the first to be under development after the Lisbon Treaty came into effect. I also cross-reference the dossier relating to anchovy in the Bay of Biscay (12548/09) which is similarly affected, although its only significance for the UK is this political issue.

You wrote to me on 2 February last year to confirm clearance of the specific proposal from scrutiny, and at the same time you expressed your Committee's interest in ongoing progress on this. It will be helpful if I provide a brief re-cap of the political issue.

A significant faction (a blocking majority) led by France & Spain objected to the proposed co-decision legal base. The dissenting Member States argued that annual decisions on fishing levels should only be subject to

Council agreement (and not by Council and Parliament). The Lisbon Treaty (as reflected in Article 43 (3) of the Treaty for the Functioning of the EU) has provision to allow for annual fishing decisions which cannot be delayed by a long process needing full political co-decision agreement.

Long term management plans, however, follow a multi-annual approach in agreeing the parameters for annual proposals. It is the UK view (shared by the European Parliament and Commission) that initial agreement is rightly a matter for both EP and Council Operating within the agreed decision framework can then be devolved to the Commission within a tightly defined remit to make annual fishing proposals in the light of specified scientific advice criteria.

The dissenting Member States' view is seen to reflect a desire to adhere to the old flexibility for annual political bargaining featuring potential 'horse trading' deals for higher catches. That short term approach has failed, however, and having just emerged from last year's December Council negotiations, I am all the more convinced that making decisions in this way under duress, and subject to the vagaries of the bargaining process over two days, is not the right approach to managing fisheries. Following the science within a multi-annual strategy, therefore, is key to our Common Fisheries Policy (CFP) reform aim for future fisheries management & sustainability.

The challenge has been to agree a legal structure which will satisfactorily establish such a multi-annual framework, while leaving sufficient scope for Council (i.e. enough to satisfy the dissenting Member States) to apply discretion on agreeing catch limits within a defined range which is consistent with the objectives.

Regrettably, the Commission has made few efforts to resolve this issue. To its credit, however, the Polish Presidency, in the latter weeks before the Council negotiations, introduced a model for consideration (still focusing on the horse mackerel dossier) based on the following principles:

1. The plans should be adopted in co-decision, i.e. on the basis of Art. 43.2 of the Treaty.

2. The objective of the plan should be spelled out in clear terms based on the level of fishing mortality corresponding to maximum sustainable yield (MSY) as defined by scientific advice.

3. The plans should be reasonably general in nature in order to avoid micro-management at EU level. The Harvest Control Rule (HCR) would disappear entirely from the plan, being replaced by:
    a. Annual or multiannual total allowable catches (TACs) in a standard TAC & quota regulation and/or;
    b. HCR that would be devised at a regional level in accordance with a regionalisation principle, which is one of the cornerstones of the CFP reform package.

The UK Government was open-minded in relation to most of the principles identified in this model, and we emphasised that we attach great importance to the point that much of the detail of management plans should ideally be taken forward at the regional level as part of a decentralised CFP. The Presidency model allowed some room for flexibility by the Council in terms of setting TACs, while minimising the scope for those short-term annual decisions to compromise the objective of MSY. So, on the substance we were broadly supportive of what was proposed, although we commented that we could not accept any weakening of the MSY target or any elimination of a specific reference to the fish mortality level.

The Presidency model was then discussed at Coreper. Our permanent representative reported that nearly all Member States supported the Presidency approach to strip out most of the proposal's HCR content and simply require fishing opportunities to be at a level consistent with MSY. The UK and the Netherlands were cautious about accepting such a reduced proposal and whether this could be a model for Plans under a reformed CFP; and considered further reflection was needed. Sweden sympathised with this position to some extent. The Commission, which had not been involved in the preparation of the Presidency's initiative, was also cautious. The Presidency noted significant agreement but said it would send the file for further working group consideration before an approach is made to the European Parliament.

I consider that two factors make agreement on this issue of prime importance at this time: firstly in a generic sense, in order to get this right under the CFP reform process, and secondly, there is a specific imperative in the short term, as we are pressing for an early proposal to replace the cod recovery plan, as I have described in my post December Council update.

In short, there will need to be more work on this, and we have confidence that the Danish Presidency will manage the next steps constructively. I will continue to report on developments.

January 2012

Letter from the Chair to Richard Benyon

Multi-annual plan for western horse mackerel (30566) 9003/09

Thank you for your letter of 18 January, providing an update on the debate on how far the European Parliament should be involved in the adoption of this draft Regulation. We were most interested in this exposé of the difference of view over the operation of Article 43 of the TFEU, and we were grateful for your offer to keep us posted of further developments.

8 February 2012

Letter from the Chair to Richard Benyon

Negotiation of Fisheries Partnership Agreements

Thank you for your letter of 9 February, drawing to our attention the Commission's response to the request from UKREP for information on the reasons for changing the classification of draft mandates for the negotiation of Fisheries Partnership Agreements with third countries.

Since the terms of those mandates are invariably bland in the extreme, we are not convinced that their publication would provide any useful information to the other parties, and we remain of the view that the Commission's approach is unnecessarily cautious. Having said that, we recognise that it is unlikely to change its view, and, as we would not normally feel the need to highlight negotiating mandates in this area, the constraints placed upon us are more theoretical than real. In view of this, we have decided not to pursue this matter further.

7 March 2012

Letter from Jim Paice to the Chair

EM 5398/12: COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE ON THE EUROPEAN UNION STRATEGY FOR THE PROTECTION AND WELFARE OF ANIMALS 2012-2015

Recent events in Europe in the context of both the conventional cage and sow stall bans (under the Laying Hens and Pigs Directives respectively) have clearly shown that more needs to be done to ensure consistent and effective compliance with EU rules across the Community. However, I think they also illustrate the difficulties of applying and enforcing complex legislation without the active involvement of the industry.

Our preference is therefore for a much more simplified strategic framework at EU level, with the flexibility necessary to allow Member States to reflect national or more local circumstances in their detailed rules (based on best practice promoted through the proposed network of reference centres to ensure a fully consistent approach). However, if it becomes clear that this will not be sufficient to deliver the necessary improvements and consistency in standards Communitywide, we will have no hesitation in pressing for more formal

legislative controls where these can be justified to our own industry and to Parliament. Indeed, we would make this position clear at the outset of any negotiations, so that other Member States and the Commission were left in no doubt about the importance we place on the application of robust and effective enforcement measures at the national level, irrespective of the legal framework being applied.

21 March 2012

Letter from the Chair to Jim Paice

EU Strategy for the protection and welfare of animals (33630) 5398/12

Thank you for your letter of 19 March.

My understanding is that these principally address questions raised by John Roper on this Communication, but we were nevertheless grateful for a sight of what you had to say in reply. We have of course already cleared the document by virtue of our Report of 8 February.

18 April 2012

FOREIGN AND COMMONWEALTH OFFICE

EU Accession Negotiation with Croatia: Progress on Judicial Reform and Cooperation on War Crimes

Letter from David Lidington to the Chair

I am writing to you with an overview of progress of the negotiations on the key chapter covering judicial reform, fundamental rights, tackling corruption and cooperation on war crimes (Chapter 23). Accession negotiations with Croatia are making good progress. Croatia has now opened 30 chapters out of 35 and 18 of these have been provisionally closed. Chapter 23 is one of the last chapters to open and may thus impact on the overall progress of the negotiations. We have now managed to secure agreement from our partners to an EU negotiating position that includes setting rigorous benchmarks in the areas we want including on cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY) - and propose to agree to open formal negotiations with Croatia on this basis.

You will recall that, in response to concerns about the readiness of Bulgaria and Romania to join the EU, the Council and the Commission introduced a number of measures to strengthen the accession negotiations process. A significant change was the introduction of a new chapter covering reform of the judiciary, corruption and fundamental rights. Over a number of years, the FCO have worked in close partnership with the Home Office, Ministry of Justice and other Whitehall Departments, the European Commission and the Government of Croatia to ensure that the issues covered by this chapter have been put at the centre of the accession negotiations. In line with this we have worked to secure agreement to a comprehensive and robust set of benchmarks which Croatia wilt need to meet before this chapter can close. We have now agreed a total of 31 benchmarks (most chapters have 3-6) covering a range of important issues including:

- judicial transparency, impartiality and efficiency;
- tackling corruption;
- protecting minority rights;
- resolving outstanding refugee return issues;
- protection of human rights.

We have also secured clarification that Croatia will need to show a track record of implementation across these areas.

The Government believes that it is essential that Croatia demonstrates full cooperation with ICTY and that the

progress of the accession negotiations should depend on this.

The UK has consistently argued that cooperation with ICTY should specifically be taken into account in progress of Chapter 23. My predecessor wrote to the ESC on 12 January to inform them that given the improvement in Croatian cooperation in relation to the trial of General Gotovina, the UK would start negotiations on opening the chapter.

The UK has sought and secured agreement to a closing benchmark on cooperation with ICTY. The agreed benchmark text states: - Full cooperation with the ICTY remains a requirement for Croatia's progress throughout the accession process including for the provisional closure of this chapter, in line with the negotiating framework adopted by the Council on 3 October 2005."

The Government assesses that Croatia has continued to demonstrate commitment to progress the investigation in missing documents requested by the Chief Prosecutor for the trial of General Gotovina. Since December Prime Minister Kosor has chaired 3 inter-agency meetings to drive forward an investigation by a new Task Force. The Task Force is constrained by an order from the Tribunal which prevents them from accessing documents seized from the Gotovina Defence team in December. Despite this the Task Force has conducted approximately 40 interviews with new individuals and fresh searches of premises. Chief Prosecutor Brammertz briefed the Foreign Affairs Council on 14June and expressed his increasing confidence in the Task Force. This is reflected in his latest report to the UNSC on 18 June (see Annex B).

On the basis of the agreement of a clear benchmark and this assessment of Croatian cooperation Ministers have agreed in principle to open this chapter when technical negotiations are concluded, probably on Wednesday 23 June. I spoke yesterday to Davor Bozinovic, State Secretary of the Croatian Ministry of Foreign Affairs, to advise him of this and impress on him the peed for Croatia to continue to progress the investigation and demonstrate its commitment to full cooperation with the ICTY.

The Commission will monitor Croatia's progress on this chapter closely. I would be happy to provide updates on progress to the Committee should you find this useful.
22 June 2010

Letter from the Chair to David Lidington

The Committee has asked me to thank you for the progress report contained in your letter of 22 June 2010.

As you are aware, the previous Committee had extensive discussions with previous Ministers for Europe and the previous Foreign Secretary about the implications for Croatia‘s accession negotiations of having allowed Bulgaria and Romania to accede to the EU despite sub-standard preparation and subsequent poor performance on a range of ―good governance‖ issues. It was accordingly reassured to hear that the accession process had been strengthened in a number of significant ways to ensure that candidate states did not just adopt laws consistent with the EU acquis but also built the administrative and judicial capacity to ensure that laws would be properly implemented; and that a new chapter 23 dealing with the judiciary and fundamental freedoms would involve both opening and closing benchmarks. At the time of the most recent such exchange, the previous Foreign Secretary said that he was not yet satisfied that Croatia was doing everything it could to cooperate with the International Criminal Tribunal for the Former Yugoslavia (ICTY) and was not yet ready to take forward further work on Chapter 23.

The Committee notes that the Government now judges that the right conditions obtain to justify opening negotiations on chapter 23. You go on to say that:

• before the chapter can close, a ―comprehensive and robust set of benchmarks‖ will need to be met (31 in all, compared with the 3-6 that most other chapters have), covering a range of important issues including: judicial transparency, impartiality and efficiency; tackling corruption; protecting minority rights; resolving outstanding refugee return issues; and protection of human rights;
• the Government has also secured clarification that Croatia will need to show a track record of

implementation across these areas; and a closing benchmark on cooperation with ICTY; and
• the government of Croatia has been reminded of the need for Croatia to continue to progress the investigation concerning missing documents requested by the Chief Prosecutor for the trial of General Gotovina and demonstrate its commitment to full cooperation with the ICTY.

The Committee is further reassured, though it notes your emphasis on the word ―full‖ in the paragraph you cite concerning the closing benchmark on cooperation with ICTY. This could plainly be open to a number of interpretations, and be influenced by political considerations. We would be accordingly be grateful if, when you provide the next update, you would expand on this, and say, in judging what constitutes ―full‖ cooperation, to what extent the Council will depend upon the assessment of the Chief Prosecutor.
8 September 2010

EU TRANSITIONARY PROTOCOL CONCERNING THE COMPOSITION OF THE EUROPEAN PARLIAMENT

Letter from David Lidington to the Chair

As you are aware, the EU Treaties as amended by the Treaty of Lisbon provide for the allocation of 18 extra MEPs to 12 Member States, including the UK which gains 1 extra MEP. The number of MEPs from Germany is also reduced by 3. However, as you are also aware, last year's European Parliament elections were held under the provisions of the Nice Treaty, given that the Lisbon Treaty had not at that stage entered into force, and so these additional MEPs were not elected at that time. To allow the extra MEPs provided for to be elected in the current 2009 – 2014 European Parliament and without the 3 German MEPs having to stand down in the middle of a term of office, transitional arrangements are needed to enable the number of MEPs to temporarily exceed the limit of 750 plus the President which is laid down in Article 14(2) of the Treaty on European Union.

The basis for the transitional arrangements was first set out in the December 2008 European Council Conclusions. As set out in the then Minister for Europe's letter to the Committees on this issue of 14 December 2009 those Conclusions state that: ―*In the event that the Treaty of Lisbon enters into force after the European elections of June 2009, transitional measures will be adopted as soon as possible, in accordance with the necessary legal procedures, in order to increase, until the end of the 2009-2014 legislative period, in conformity with the numbers provided for in the framework of the IGC which approved the Treaty of Lisbon, the number of MEPs of the twelve Member States for which the number of MEPs was set to increase. Therefore, the total number of MEPs will rise from 736 to 754 until the end of the 2009-2014 legislative period. The objective is that this modification should enter into force, if possible, during the year 2010.*‖

The June 2009 European Council Conclusions then confirmed that the European Council: ―*recalls its Declaration of December 2008 on transitional measures concerning the composition of the European Parliament. Once the condition set in its Declaration of December 2008 is met, the necessary steps to implement these measures will be taken by the Presidency*.‖

As outlined in the then Minister for Europe's letter in December, the Spanish government submitted in December 2009 a proposal to the President of the Council to launch a consultation without the European Commission and European Parliament to convene an IGC without holding a Convention beforehand given the limited scope of the provisions. Both the European Parliament and the European Commission consented to the IGC without a Convention. In order to make the required transitional changes, the Member States of the EU agreed a Protocol containing transitional arrangements concerning the composition of the European Parliament, via a very limited Intergovernmental Conference (IGC) in the margins of the 23 June meeting of the Committee of Permanent Representatives of EU Member States.

As with all Treaty changes, the Protocol now requires ratification from all Member States before it can enter into force. Any amendment to the EU Treaties can only be ratified by the UK if it is approved by Act of Parliament. This is set out in section 5 of the European Union (Amendment) Act 2008. Parliament therefore

needs to pass primary legislation before the Protocol needs to be ratified in the UK and the Government intends to include the necessary provision in the forthcoming European Union Bill.

This is a technical change to the Treaty relating to numbers of MEPs and does not transfer any power or competence from the UK to the EU. The additional numbers of MEPs are entitled to take their seats in 2014 – this Protocol simply means that they will be able to do so earlier than this date.
2 July 2010

Letter from the Chairman to David Lidington

Thank you for your letter of 2 July.

We are grateful to you for explaining so clearly the progress that has been made towards an amendment to the Lisbon Treaty to increase the number of MEPs for the duration of the current European Parliament. We note the Government's intention to include provision for the approval of the Protocol in the European Union Bill.
8 September 2010

Letter from David Lidington to the Chair

Michael Connarty MP, Chair of the European Scrutiny Committee of the last Parliament, wrote to the former Foreign Secretary, David Miliband, on 30 March about the Western European Union (WEU). Unfortunately, Mr Connarty's letter did not reach the FCO until shortly before dissolution. This, added to the General Election and change of Government, has led to a delay in replying to Mr Connarty's letter.

This Government attaches significant importance to the issue of Parliamentary scrutiny of the EU's Common Security and Defence Policy (CSDP). As you know, the UK and all nine other Western European Union members announced on 31 March 2010 their intention to close the WEU by June 2011. We can use this time to have a period of reflection on the future of cross-European parliamentary debate on European defence issues, currently performed by the WEU Assembly. We see a value in collective debate and any future forum could potentially play a useful role for exchange of information on CSDP issues.

The intergovernmental nature of CSDP is fundamental. I therefore believe in the primacy of national parliamentary scrutiny of CSDP, as performed by your and other Committees. This can be usefully informed by contacts between parliamentarians from all EU member states but I do not believe it should involve any expansion of the European Parliament's competence. It would also be preferable to include parliamentarians from non-EU European NATO allies and EU candidate countries in any future forum given the important role that they play in CSDP and the key partnership between the EU and NATO on security matters.

One of the prime drivers behind member states'decision to wind up the WEU was its poor cost-effectiveness. Inter-parliamentary structures in Europe are in general funded by the parliaments themselves. But regardless of future funding arrangements, there will be clear pressures in current times to keep the mechanism of providing for inter-parliamentary dialogue on CSDP to the minimum cost and bureaucracy possible.

The FCO is happy to facilitate debate on this issue. I have therefore attached a non-paper which puts forward a wide range of options for the future of European-level inter-parliamentary dialogue on CSDP. We offer these options as a basis for consultation with you and other interested Parliamentarians. I would welcome your views.
15 July 2010

Letter from the Chair to David Lidington

Thank you for your letter of 15 July outlining the Government's position on the future of parliamentary scrutiny of CSDP following the closure of the WEU. We agree that continued parliamentary scrutiny of this policy area is important and that such scrutiny must reflect the intergovernmental nature of the CSDP.

The Committee agrees with the Government's policy that any new arrangement should: not increase the competence of the European Parliament; involve all relevant actors; and be as cost effective as possible.

On the specific option outlined in your discussion paper: we believe that there is a need for some interparliamentary forum to ensure that meaningful and structured discussions take place and therefore cannot agree to option seven. We also have concerns about the third option you outlined, that of establishing a standing committee. There is a risk that such a Committee might develop into a copy of the existing set up. We are also disinclined to support options 5 and 6 which we believe could lead to national parliaments taking a less prominent role in the scrutiny of CSDP by giving control over the agenda to the Commission/European Parliament respectively.

Our preferred option would either be to give responsibility for scrutiny of the CSDP to a reformed version of COFACC, possibly by merging it with CODDC, its defence committee counterpart. While some modification to the existing structure may have to be made to ensure all interested parties are involved we believe this option has many advantages. It would involve members already engaged in CDSP issues; retain national parliament control over the agenda; and would not require the establishment of a new body or secretariat. We would welcome further discussions with you on exactly how this proposal could be taken forward.

In addition, our predecessors wrote on 30 March to the Foreign Secretary, asking him to provide the negotiating history of Article 10 of the Protocol on the Role of National Parliaments in the EU, attached to the Lisbon Treaty. They wanted to understand why reference to the ―Conference of European Affairs Committees (COSAC)‖ was replaced by a ―Conference of Parliamentary Committees for the Affairs of the Union‖ and the reasons for including, for the first time the EU Treaties, a reference to this latter Committee ―debating matters of common foreign and security policy, including common security and defence policy‖. As a reply was never received, we would be very grateful if you could provide us with an answer
8 September 2010

Letter from Chris Bryant to the Chair

The Chairman of the Committee wrote to me on 30 March 2010, about providing Limité documents to your Committee, on an in confidence basis. You agreed the handling proposals I set out in my letter of 23 March but sought further clarity on how the new measures will work in practice.

We will be entirely pragmatic and will both respond to requests from the Committee for further information, and when lead Departments judge it is appropriate, send these documents. In all cases we will try to aid the Committee in reaching an informed decision by updating the Committee on the passage of legislation through the Brussels machinery.

To clarify, documents will be provided in any of the circumstances described in points (1) to (3) of my letter of 23 March 2010. I enclose a passage intended for the Cabinet Office Scrutiny Guidance, which the Cabinet Office would be happy to discuss with Clerks to make it as clear as possible.

I hope that this significant step will aid the Scrutiny process and demonstrate the Government's long standing commitment to Parliamentary oversight.
23 April 2010

Letter from David Lidington to the Chair

Parliamentary oversight of EU sanctions measures

As part of my wider commitment to keeping Parliament informed of the Government's activity, I am writing to outline how I propose to keep you informed of Government policy on EU sanctions regimes.

Written Ministerial Statements

FCO Ministers will announce new sanctions regimes and significant changes to existing regimes by means of a Written Ministerial Statement soon after the sanctions measures are adopted. A statement will be issued when either the UN or the EU agrees to:

 impose a new sanctions regime

 extend the duration of an existing sanctions regime

 significantly alter an existing sanctions regime

 lift a sanctions regime

However, the FCO will not issue a Written Ministerial Statement for non-substantive changes to a sanctions regime, such as updating a list of dual use items, or adding or removing names to an assets freeze or travel ban list. In addition to separate statements, every autumn the FCO will issue a Written Ministerial Statement informing Parliament of all the sanctions regimes which the UK implements.

I will send a copy of these Statements to the Committees to keep you in touch with developments.

European scrutiny
We will continue to submit Explanatory Memoranda to the European Scrutiny Committees setting out the policy, financial and legal implications of the Council Decisions and Council Regulations adopted to implement sanctions measures.

FCO Ministers will, where possible, write to the Scrutiny Committees between six and eight weeks in advance of a sanctions negotiation, informing the Committees of the upcoming negotiation and of the UK‘s high-level position. In line with Cabinet Office Scrutiny Guidance, the FCO will subsequently submit an Explanatory Memorandum to the Committees, copied to the Foreign Affairs Committee, as soon as a draft Council Decision and/or Council Regulation has been received, in the following circumstances:

 a new EU autonomous sanctions regime is being adopted

 a new sanctions regime is being adopted to translate UN sanctions measures into EU law

 an existing EU sanctions regime is being extended

 substantive changes are being made to an existing (either UN or EU autonomous) sanctions regime

 a sanctions regime is being lifted

Where a sanctions regime is being adopted to translate UN sanctions measures into EU law, the FCO will also provide the text of the relevant UN Resolution. Once negotiations are complete, the FCO will send a copy of the final Council Decision and/or Council Regulation to the Committee, along with a letter informing them whether there have been substantive changes in the final text, and their significance.

However, the FCO will not submit an Explanatory Memorandum to the Committees when the draft Council Decision and/or Council Regulation only contains proposals to:

 make minor changes to lists of people or organisations subject to restrictive provisions in existing measures

 make minor changes to lists of goods that are subject to an embargo

 extend measures imposing sanctions in pursuance of UN Security Council resolutions, without making substantive changes to the UN measures

Instead, FCO officials will contact Committee officials with information about such upcoming changes in good time prior to the proposed changes, with an explanation of how they are technical and/or minor. Committee officials will then indicate to their FCO counterparts that they are content for them not to be deposited, or explain why they would like them to be deposited with an Explanatory Memorandum. The FCO will not submit Commission Regulations, as they are not subject to scrutiny requirements.

The FCO will do everything possible to avoid an override. However, an override may be necessary, for example if sanctions negotiations are completed whilst Parliament is in recess. In these instances, we will provide the Committees with as much information as possible before recess, and submit an Explanatory Memorandum for their consideration upon their return.

If you are content with the above approach, I will instruct officials to take forward arrangements.
3 August 2010

New Powers for Parliament

Letter from David Lidington to the Chair

Thank you for your letter of 8 September about new powers for Parliament under the Lisbon Treaty.

I can confirm that I fully intend to honour the commitment given to the Committee in January 2010, under the previous administration, that there will be no change in the range or scope of documents sent for scrutiny following agreement of the Lisbon Treaty.

I take Parliament‘s role in scrutiny over EU business very seriously. As you know, a new Scrutiny Reserve Resolution, Terms of Reference and Opt-in Resolution were agreed with the EU Select Committee in the House of Lords before the summer recess. I look forward to doing the same with your Committee. Once I have received your letter setting out your Committee‘s latest ideas, I would be very happy to discuss this with you.

This Government is working on getting the scrutiny system right. This means fulfilling the Government‘s obligations towards Parliament, engaging effectively with Parliament and allowing sufficient time for Parliament to take a view. I have made clear to my officials how seriously I take my obligations. I have also written to the High Representative to raise the importance of National Parliaments in the decision making process and to ask for her help in making sure, wherever possible, an EU document can be made available to National Parliaments for a longer timeframe before a Council decision.

This Government is looking at ways that parliamentary control, scrutiny and accountability over EU decision making can be strengthened. I would welcome any further thoughts you have on how we can all improve the system.
1 October 2010

Letter from the Chair to David Lidington

During the final months of the last Parliament the previous Committee was involved in discussions with the Government about a new Standing Order No.143 and Scrutiny Reserve Resolution. Both were needed in order to reflect the changes in terminology brought about by the Lisbon Treaty.

Unfortunately it proved impossible to reach agreement before the dissolution and I will be writing to you to

suggesting possible ways forward. In view of the difficulties in making progress, the previous chairman sought and received for the then Minister for Europe (Chris Bryant) an assurance that, in the interim, the Government was willing to ensure that the scrutiny process was not weakened by the provisions of the Lisbon Treaty. In his response on 11 January 2010 Chris Bryant wrote to Michael Connarty as follows:

I can assure you that we are committed to continue arrangements for scrutiny, following the entry into force of the Lisbon Treaty, in exactly the same way as previously. This means there will be no change in the range or scope of documents that we send to you for scrutiny.

I understand that the Government will be writing to the chairs of scrutiny committees in both Houses with proposals for changes to the scrutiny system. The Committee will consider these and give its views in due course. In the meantime it would be helpful and if you could reaffirm the Governments view as set out in the then Minister for Europe's letter of 11 January that there will be no change to the range or scope of documents that we receive for scrutiny consequent on the entry into force of the Lisbon Treaty.
13 October 2010

EUROPEAN UNION: FORTHCOMING FIRST SESSION LEGISLATION

Letter from David Lidington to the Chair

Thank you for your letter of 15 September regarding the forthcoming European Union Bill.

You ask that there should be sufficient time after introduction of the Bill for your Committee to consider and take evidence on the Bill and its provisions. In implementing the Government's commitment for a referendum lock, I am very much aware of the need for Parliament, and indeed our wider public, to have political and legal clarity on what this will and will not mean in practice. It is therefore important that your Committee should be able to consider properly the Bill and its provisions, and in order to assist in your consideration of the Bill, I should be pleased to appear before your Committee soon after First Reading. However, given the importance of the Government's commitments in this area, the consequent need to ensure that the Bill continues to make progress after it is introduced to Parliament, and given the wider importance of making good progress in the legislative programme as a whole, I am unable to give the Committee any assurances at this stage about when the various parliamentary stages of the Bill will be scheduled.

You refer in your letter to the Government's approach to ratchet clauses, or passerelles. As you are aware, there is no one agreed definition of a ratchet clause. Some provide for modification of the Treaties without using the ordinary revision procedure. Some are one-way options already in the Treaties, which EU Member States can together decide to exercise and which allow existing EU powers to expand. As it is difficult to come up with one definition of a ratchet clause, we are likely to list in the Bill those Articles in the EU Treaties which the Government considers to be ratchet clauses and which will therefore require primary legislation before they can be used. We will also list those decisions which would transfer power or competence from the UK to the EU, and would also therefore require a referendum (commitments (b) and (d) respectively in my letter of 10 September).

The Government will set out clearly which ratchet clauses fall between each of these commitments upon publication of the Bill. In respect of the field of criminal justice, you are of course already aware that the Government is committed to approach forthcoming legislation on a case-by-case basis, with a view to maximising our country's security, protecting Britain's civil liberties and preserving the integrity of our criminal justice system.
28 September 2010

Letter from the Chair to David Lidington

Thank you for your letter of 28 September, telling us that there should be sufficient time after introduction of the Bill for this Committee to take evidence on it, and from you.

Although we understand that you cannot at present give us assurances on the timetable for the various stages of the Bill, we do ask you to ensure that the Committee is given adequate time to conduct its inquiry we are likely to hold three evidence sessions — and produce its Report. This is all the more important now that the Government has announced that it will include a provision in the Bill affirming the principle of sovereignty.
13 October 2010

Letter from William Hague to the Chair

Thank you for your letter of 22 October and for details of your proposed strategy for the adoption of a resolution on additional rights of participation for the EU as an observer delegation in the UN General Assembly. The UK is a strong supporter of the resolution.

As the Deputy Prime Minister Nick Clegg said, in his address to the UN General Assembly, it is important that the vital role of the EU in promoting development and prosperity can be adequately represented in the Assembly.

I agree with the approach you propose, welcome the establishment of your Task Force to co-ordinate the campaign, and am pleased to confirm UK support. To be successful it is important that our campaign reflects and responds to the dynamics of the UNGA in New York. It is therefore essential that it is led by our teams in New York, who have the best understanding of the politics there.

We also need to respect the genuine questions and concerns the wider UNGA membership had about the resolution, including fears about its impact on the nature of the UNGA as an assembly of nation states. This will not necessarily be easy. But we should succeed through wide and open consultation, and by emphasising the limited nature of the EU proposal: the EU will remain an Observer in the UNGA; the rights of Member States will not be curtailed in any way; and the proposed changes will not be precedents for change in other form.

I would also caution against any linkage to the EU's development, commercial and political partnerships with other Member States, which we believe would be counterproductive. Our
strongest argument is that this is a technical and procedural issue about changing EU representation in the UNGA, and that it is in the General Assembly's interest that the EU should be effectively represented.

I have instructed my officials to work closely with your task force so that we can implement the agreed approach throughout the UK's network.
3 November 2010

EUROPEAN UNION BILL

Letter from David Lidington to the Chair

Thank you for your letter of 27 October, requesting advance sight of the EU Bill before publication and First Reading. I fully understand your desire to maximise the time that your Committee has to consider the Bill. The detail of the Bill is, however, still subject to consideration within Government, and I will therefore be unable to share it with you in draft before the introduction of the Bill to Parliament.

It is likely that there will be a period of approximately one month between First Reading and Second Reading and a further significant interval between Second Reading and Committee Stage. I reaffirm that I expect that Committee Stage will be taken on the floor of the House, which will allow all Members the opportunity to consider the Bill in depth. I trust that this will afford your Committee the time it needs to scrutinise the Bill, and I repeat that I would be pleased to appear before your Committee in order to discuss the Bill in detail once it has been introduced to Parliament.
8 November 2010

Letter from the Chair to David Lidington

The Committee recently made its first recommendation for a reasoned opinion on subsidiary; the case concerned a draft directive amending directive 97/9/EC on investor compensation schemes.

Experience with this first reasoned opinion showed that the system could work, though the timing was tight. That it worked was down to the Government facilitating the setting up of a European Committee at very short notice and being willing to see consideration of a reasoned opinion as a matter for Parliament by having a Minister move a motion (formally) with which the Government did not agree.

The power to submit a reasoned opinion rests with the House, not with one of its Committees. Unless the House agrees to delegate to the European Scrutiny Committee the power to speak on its behalf then a mechanism is needed for the House to agree a recommendation from the Committee for a reasoned opinion. At present there is no formal mechanism and the purpose of this letter is to ask the Government to agree one.

National parliaments have eight weeks in which to submit reasoned opinions. This is an extremely tight timescale. Following deposit of a proposal, the Government has two weeks to produce its EM, so the Committee therefore has at most six weeks in which to scrutinise the document, possibly seek further information from the Government, and then produce its report with a recommendation that the House submits a reasoned opinion.

In its report ―Subsidiarity, national parliaments and the Lisbon Treaty‖2, the previous Committee made the following recommendations:

• That it is desirable to give the opinion the authority of the House itself;

• The Motion should not be proposed by the Government but by the European Scrutiny Committee; and

• Because of the lack of time the Motion should not be debated. Instead, the chairman or designated member of the European Scrutiny Committee should
outline the grounds for the reasoned opinion in a short speech to which a Minister may reply.

In response the previous Government suggested that the Committee should indicate whether it wanted its report debated in European Committee or on the floor of the House, in keeping with existing processes. The Government would table a Motion, which would be amendable, to endorse the Committee‘s recommendation. A decision on the Motion would give the view of the whole House on whether or not to submit a reasoned opinion.

In the recent case, the debate in European Committee allowed both Government and Opposition to state their views. On reflection therefore it does not seem desirable to pursue the previous Committee‘s initial suggestion of two short speeches — from the chairman and Minister — instead of a debate. Such a procedure would have the effect of shutting out the opposition.

However, if a debate is to take place the question arises whether there is time for a European Committee to be set up or whether the debate should be on the floor of the House. It was highly unusual for the Committee of Selection to nominate a European Committee on Wednesday for a debate the following day. Since recommendations for reasoned opinions are likely to be rare, the Committee takes the view that the Motion for a reasoned opinion should be debated on the floor of the House under Standing Order No.16, which provides for a 90 minute debate.

Only the Government can guarantee time within the deadline. The Committee would therefore resist any suggestion that the Motion could be debated in time provided at the disposal of the Backbench Business Committee.

Since the provision under the Lisbon Treaty for reasoned opinions is a provision for parliaments and since the Government may wish to oppose the Motion, the Motion should be moved by the chairman of the European Scrutiny Committee.

Finally, there is the question of whether the European Scrutiny Committee should have the monopoly over recommendations for reasoned opinions. It is unlikely that recommendations will come from other sources. But it is possible that departmental select committees, or individual members, may wish to table motions recommending the sending of reasoned opinions.

We consider that there is a good case for the European Scrutiny Committee acting as gatekeeper. First it is best placed to assess whether to issue a reasoned opinion. The application of the principle of subsidiary within the EU is a specialist field. The political and legal arguments can be complex and the European Scrutiny Committee is best suited to consider them. Secondly, there is a reputational risk. The value of a House of Commons reasoned opinion depends on its contents: the more often one is issued without good cause, the less often it will be taken seriously in Brussels. The European Scrutiny Committee is best placed to control quality.

I look forward to discussing these issues with you.
9 November 2010

EU-RUSSIA SUMMIT BRUSSELS

Letter from David Lidington to the Chair

1. I am writing to update you and your Committee on the 25th EU-Russia Summit that took place in Rostov-on-Don on 31 May -1 June 2010. Historically your Committee has been interested in EU-Russia interaction and I am keen to keep you as up to date as possible. I must stress however that the following impressions come via the Spanish Presidency, which represented Member State views.

2. The Summit was hosted by President Dmitry Medvedev, accompanied by Sergey Lavrov, Minister of Foreign Affairs; Mr Alexander Konovalov, Minister of Justice; Ms Elvira Nabiullina, Minister for Economic Development and Trade; Mr Alexander Grushko, Deputy Minister of Foreign Affairs; and Ambassador Vladimir Chizov, Permanent Representative of the Russian Federation to the EU. The European Union was represented by President of the European Council, Mr Herman Van Rompuy, and President of the European Commission, Mr Jose Manuel Barroso, accompanied by High Representative for Foreign Affairs and Security Policy, Baroness Catherine Ashton, and Trade Commissioner Karel De Gucht. In reporting the discussions below, I refer to the 'EU' side, covering the input of Council, Commission and European Action Service.

3. Outcomes

• The EU-Russia Partnership for Modernisation was launched, and a Joint Statement issued (attached). The Partnership for Modernisation was first proposed at the EU-Russia Summit in Stockholm in November 2009. It seeks to promote closer EU-Russia relations through EU support to Russia in her attempts to modernise. Both sides saw great potential for the partnership. They agreed it was important that the Partnership incorporated rule of law and civil society elements: in this way, efforts to modernise would be more likely to succeed and endure. Within this agreed approach, the focus would be on concrete activities, including satellite navigation; energy efficiency; joint programmes to strengthen the judiciary and fight corruption and strengthening dialogue with civil society.

• The Russians signed the Agreement on the Protection of Classified Information in the margins of the Summit {signed by the EU in 2009). Your Committee cleared an Explanatory Memorandum covering the Agreement on the Protection of Classified Information in December 2009.

Summit Discussions

4. The Summit focused on EU-Russia relations; climate change and energy; the global economy and trade; arid a range of international issues.

EU-Russia Relations

5. Both sides noted progress in the negotiations for the New Agreement following the recent closure of the ninth round. The EU emphasised the importance of substantial trade and investment provisions as a central tenet of the Agreement.

6. The EU welcomed a number of positive developments on human rights Issues and the rule of law, including the ratification in the *Duma* of protocol 14 of the European Convention on Human Rights, the extension of jury' trials nationwide and the confirmation of the moratorium on the death penalty. The EU raised concerns about the situation of human rights defenders and journalists in Russia and about worrying developments in the North Caucasus.

7. On visas, Russia said it was ready to move reciprocally and immediately towards visa-free travel. President Medvedev presented a draft visa waiver agreement. The EU called for realism and understanding. There was scope to move forward gradually, focusing on results and concrete progress. The EU side added that the implementation of both the readmission and visa facilitating agreements were crucial factors with regard to further progress in the visa dialogue.

8. The EU stressed that crisis management cooperation could contribute to finding solutions to protracted conflicts in the common neighbourhood. It welcomed good cooperation in Chad and coordination in the framework of the EU operation ATALANTA, and looked forward to a new round of experts' talks on a Framework Participation Agreement in the coming weeks.

9. In this context, you will no doubt be aware of the recent joint announcement by President Medvedev and Chancellor Merkel on proposals for a new EU-Russia Political and Security Committee. This was not discussed at the Summit.

Discussions will now be taken forward in the Council with a view to an outcome at the next Summit under the Belgian Presidency. I will update the Committee with further information on the EU-Russia PSC, as events develop.

Climate Change and Energy

10. The two sides noted that Cancun would be an important stepping stone towards a binding agreement. The EU pressed Russia to be more ambitious on unused carbon allowances and on reducing greenhouse gas emissions. Russia indicated it would be prepared to discuss its position on targets for emissions reductions but stated that its final decision would depend on moves by other big emitters.

11. On energy the Russian side said that the Energy Charter Treaty was a useful framework but that work was needed to better reflect the relations between producers, transit countries and consumers. The EU agreed that the Energy Charter was the right context for discussion on a multilateral energy framework. On Ukraine, Russia said that the new momentum on Russia-Ukrainian relations was 'good for Europe'.

Economy and Trade

12. Exchanges on the economy focused on recent developments in the Euro zone and global financial governance issues. Both sides stressed the need for international coherence in working through the global financial challenges still at play. A step by step approach was needed.

13. The EU side pressed Russia to withdraw its remaining protectionist measures, introduced as part of its response to the economic crisis, and added that trade provisions were to be a key element of the New Agreement between the EU and Russia. The Russian side gave no response on the issue of tariff hikes.

14. The EU emphasised that Russia joining the WTO was a key aspect of modernisation. President Medvedev confirmed Russia's intention to join the WTO. The EU was fully supportive of Russia's accession. Russia would not be slowed down by Kazakhstan or Belarus (although it remains to be seen whether Belarus will eventually join).

International issues

15. HR Ashton and FM Lavrov agreed a Joint Statement on the Gaza flotilla. The
Middle East Peace Process was given particular focus during the lunch time discussion on 1 June. The sides also discussed the Iranian nuclear issue;
Afghanistan and Pakistan; Western Balkans; European Security; and stability and Security in the EU-Russia common neighbourhood. The EU called on Russia to comply fully with its commitments under the Sarkozy/Medvedev agreements following the August 2008 war in Georgia; and for EUMM to be able to access South Osselia and Abkhazia. Russia recalled the Tagliavini report and stated that Georgian drones were frequently deployed along the Administrative Boundary Lines [Russia used the term _boarders'of South Ossetia and Abkhazia.

Assessment

16. The Summit was balanced and measured, with the Partnership for Modernisation as the centrepiece. The launch of this initiative gave new impetus to discussions on the New Agreement and Russia's INTO accession which both sides acknowledged as key tenets of Russia's modernisation.

17.1 hope you will find this readout useful. I am writing in similar terms to the Chairman of the European Union Select Committee in the House of Lords. I will place this letter in the Library of the House.
10 January 2011

Letter from the Chair to David Lidington

The Committee has asked me to thank you for your 10 January letter containing a ―read-out‖ of the 7 December 2010 EU-Russia Summit.

While being of great political importance, as the Committee indicated in its Report of 13 October 2010 on the previous such ―read out‖ (and in my 17 November letter about a similar ―read-out‖ on the latest EU-China Summit), all of this is of limited interest to the Committee, since none of it relates to documents that the Committee is required to scrutinise. The Committee therefore again suggests, as it also did with respect to the EU-China Summit reports, that such ―read-outs‖ are of more interest to the Foreign Affairs Select Committee (to whose Chairman and Clerk I am forwarding a copy of your letter) and that, henceforth, it would be more fruitful were you to direct such reports to them.
26 January 2011

UPDATE – EU STRATEGY AGAINST THE PROLIFERATION OF WEAPONS OF MASS DESTRUCTION (WMD)

Letter from Alistair Burt to the Chair

The European Council endorsed the following document on 14 June 2010:

Six Monthly Progress Report on the implementation of the EU Strategy against the Proliferation of Weapons of Mass Destruction (2010/I).

In accordance with past practice I am submitting this document to your Committee for information.

The progress report draws together the numerous aspects of counter proliferation work in which the EU is heavily involved.

The EU played an important role ahead of and during the Review Conference of the Nuclear Non-Proliferation Treaty (NPT) which took place in May, and, for the first time in ten years, reached agreement to revitalise the Treaty and agreed a way ahead towards implementing the 1995 Resolution on the Middle East. By lobbying since 2009 in favour of realistic and balanced action plans and engaging with key multipliers in all regional groupings, the EU paved the way for realistic and successful discussions at the Review Conference. EU

coordination also proved effective and a skilful EU Presidency made the EU a well-respected actor in the negotiations of the Conference's final document. The EU will now work closely with international partners to capitalise on these achievements and to translate the commitments made at the Review Conference into concrete action. As a first step, the EU will soon engage with all states in the Middle East with a view to holding a seminar on a zone free of Weapons of Mass Destruction and their means of delivery in the region ahead of the 2012 regional Conference agreed to at the Review Conference.

The Iran nuclear programme continues to dominate the counter proliferation landscape. EU Member States with support from the US, Russia and China are pressing forward in efforts to find a diplomatic solution, while being clear that Iran must show willing to engage constructively with the international community. The further United Nations sanctions resolution against Iran (UNSCR 1929) agreed in June 2010 is designed to stem the flow of funding to the controlling Republican Guard. The UK remains at the heart of negotiations within the EU to implement the UN sanctions.

This latest Report shows good progress and cooperation towards the envisaged aspirations of EU WMD strategy, reflects significant UK input, and supports our counter proliferation goals.
29 June 2010

11453/06 COMMISSION WORKING DOCUMENT ON THE FEASIBILITY OF AN INDEX OF THIRD COUNTRY NATIONALS CONVICTED IN THE EUROPEAN UNION

Letter from James Brokenshire to the Chair

Further to Meg Hillier's letters of 10 December 2009 and 26 January 2010 I am writing to update the Committee on developments to the Commission's work on the feasibility of an index of third country nationals convicted in the European Union.

The UNISYS study has now been completed. Its main recommendation is that Member States should use a decentralised exchange system of criminal records information on third country nationals (ECRIS-TCN) to find out whether third country nationals have convictions elsewhere in the EU. There is no requirement for countries to store biometric information such as fingerprints on their criminal record; instead countries would be required to store alpha-numeric information on third country nationals.

UNISYS also recommended that Member States examine the possibility of creating an integrated fingerprint search system (CRIS-FIN). Very much a test bed for now, CRIS-FIN would look at fingerprints within a wider identification context and cover all convictions and not just those of non-EU nationals. This would be a significant piece of work, not least because fingerprints are not used by the majority of Member States on their criminal conviction register. The UK is significantly ahead of the game on fingerprints because most UK convictions already have an attached fingerprint record. The UK, through the ACPO Criminal Records Office, is also already in receipt of EU funding to look at fingerprints within a criminal conviction context so may well be able to take a leading role with any CRIS-FIN project should it move forward.

The UNISYS report is not a formal legislative proposal from the Commission. The current five-year JHA work programme, the Stockholm Programme, includes an invitation for the Commission to propose a register of third –country nationals who have been convicted by the courts of the Member States. The latest timetable we have seen suggests the draft directive could be issued in 2011. Any formal proposal from the Commission will be subject to the usual scrutiny procedures.
27 September 2010

Letter from the Chair to James Brokenshire

Thank you for your letter of 27 September on the conclusions of the UNISYS report, which we were grateful to receive.
20 October 2010

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL LAYING DOWN THE RULES AND GENERAL PRINCIPLES CONCERNING MECHANISMS FOR CONTROL BY MEMBER STATES OF THE COMMISSION'S EXERCISE OF IMPLEMENTING POWERS

Letter from David Lidington to the Chair

Thank you for your response of 9 September to my Explanatory Memorandum of 11 June. You requested a copy of the Presidency's revised draft of the Regulation and my views on progress to date.

I enclose the latest draft Belgian Presidency proposal, dated 20 September, which should be read in conjunction with the compromise text from the Spanish Presidency (also enclosed). I should be grateful if you could please treat these documents in confidence since the text is the subject of a live negotiation within the Council working group.

The current text is a significant improvement on the Commission's first draft in the following regards:

Selection of procedures

There is a presumption that the more rigorous examination procedure will apply to more sensitive areas such as taxation.

Time limits for consideration of Commission draft measures

It is made clear that the Member States should have an early and effective opportunity to examine the Commission's proposals.

Additional obligations of the Commission

The Commission is required to take into account amendments made by the Member State representatives on the committee and to find solutions that command the widest support in the committee.

Written procedure

A Member State may ask for the written procedure to be halted and for a meeting to be called.

Appeal committee

An Appeal Committee comprised of Member State representatives is introduced as an extra control over the Commission. Where the main committee does not support draft measures by a qualified majority and does not oppose the measures by qualified majority, the general rule is that the Commission cannot adopt the measures. However, in specified cases it must first submit its measures to the Appeal Committee for further consideration.

Urgent measures

Additional obligations are imposed on the Commission. Urgent measures cannot stay in effect for more than six months and can be terminated by the Member State committee at an earlier date.

Review

The Presidency text includes an obligation on the Commission to present a report on the working of the Comitology Regulation five years after it comes into force.

However agreement has not yet been reached on measures relating to Common Commercial Policy (CCP). CCP is currently outside the comitology regime. The Commission proposes to bring these measures within the

new comitology regulation and make them subject to the standard comitology voting rules (i.e. qualified majority to adopt the measures and qualified majority to block the measures). The UK together with a number of other Member States (constituting a blocking minority) is pressing for there to be the possibility of the existing CCP voting rules continuing. In some cases, this would mean having a simple majority to block a Commission measure rather than a qualified majority. But there is also a blocking minority against this and thus an impasse in the negotiations on this point. This was not resolved in COREPER I on Friday 24 September, but the UK, together with other members of our blocking minority, made clear that the current Presidency compromise text was
unacceptable for us.

The Presidency is proceeding with bilateral negotiations with key Member States. They remain keen to push for a First Reading deal with the Parliament. In order to achieve this, they would need to have a clear Council position on all issues before the European Parliament JURI Committee meets on 18 October.

I shall continue to keep you informed of significant developments on this dossier.
28 September 2010

Letter from the Chair to David Lidington

Thank you for your letter of 28 September updating us on the negotiation of the above draft Regulation and enclosing the latest Presidency text accompanied by your helpful comments. We were grateful to receive this. When we reported on the proposal in September, we took the view that the Commission would have excessive freedom from Member State control in the exercise of its implementing powers; and so we are pleased to note that the negotiation appears to be going the Government's way. We also fully support your stance on implementation of the Common Commercial Policy by the Commission.

This is a matter of sufficient importance that we would like to report it fully to the House. We will not do so for the reasons of confidentiality you mention, but would be grateful if, in due course, a public version of the revised proposal could be deposited, with further commentary where necessary, so that we can report it to the House.
20 October 2010

EU ASSOCIATION AGREEMENTS WITH GEORGIA, ARMENIA AND AZERBAIJAN

Letter from David Lidington to the Chair

I am writing to inform you that on 10 May the General Affairs Council authorised the opening of negotiations with Georgia, Armenia and Azerbaijan on bilateral Association Agreements with the EU through the formal adoption of negotiating mandates. The decisions authorising the opening of negotiations and setting out the arrangements for the EU negotiating team are attached at Annex A and sent in confidence.

Negotiations with each of the three countries are expected to formally open in June or July 2010. Before any resulting Association Agreement can be concluded by the EU it will be subject to scrutiny. In the meantime, I will be happy to provide updates on the progress of negotiations should this be considered useful by the Committee.
18 May 2010

Letter from the Chair to David Lidington

The Committee has asked me to thank you for your letter of 18 May concerning the opening of negotiations with Georgia, Armenia and Azerbaijan on bilateral Association Agreements.

As you note, before any resulting Association Agreement can be concluded by the EU it will be subject to scrutiny. In the meantime, though appreciative of your offer, the Committee sees no need for any updates on the negotiations.

18 May 2010

Letter from David Lidington to the Chair

In my Written Ministerial Statement to Parliament of 14 July (attached) I highlighted EU Member States intentions to seek agreement on a UN General Assembly (UNGA) resolution which would grant the EU additional rights of participation in that body. In the event adoption was not possible before the end of the 64th session of the UNGA as other members of the Assembly wanted more time to consider the resolution.

This means adoption will have to be deferred until the 65th session of UNGA which begins today. The next opportunity for adoption is likely to be in November after the General Debate and after many of the UNGA Main Committees have finished their work for the autumn session.

In the meantime the EU will continue as before presenting agreed positions of the Member States through the rotating Presidency. This is a workable solution but not what was envisaged by Lisbon.

The UK will remain closely engaged in the discussions about the handling of the draft resolution. We want the EU to have the powers necessary for it to fulfil the role hitherto played by the rotating Presidency, representing the EU and the Member States where we have an agreed position. We were content that the draft reflected UK interests, ensuring that the EU would only speak when the EU Member States agreed it should, that it should remain an observer and not have voting rights and that the resolution would only have effect in the UNGA and certain subsidiary bodies where it made sense for the EU be able to act. As an observer the EU would not be seated among the UN member States in the Assembly chamber.
As I said in my Written Ministerial Statement, the granting of such rights to the EU would not affect the UK's position as a member of the UNGA or the UN Security Council. Nor would it prejudge whether the EU should actually exercise those rights on any particular issue. If the resolution is adopted, the UK will decide where and when the EU acts in discussion with our EU partners and on the basis of a balanced judgement as to where UK interests lie.
15 September 2010

Letter from the Chair to David Lidington

The Committee has asked me to thank you for your 15 September letter concerning the fate thus far of the draft UNGA resolution on additional EU rights of participation in that body, and to say that it looks forward to hearing further from once the situation is resolved.

Looking further ahead, and bearing in mind that this is the beginning of a process, we should be grateful to be kept informed about any proposal by the Commission or EEAS for a comprehensive review of how the EU should position itself in other international organisations and related bodies.
20 October 2010

EU CHINA SUMMIT, BRUSSELS

Letter from David Lidington to the Chair

I am writing to give your Committee a read-out of the thirteenth EU China Summit that took place in Brussels on 6 October 2010. As always a summary of this kind comes with the caveat that, as this was an event where we were represented by the EU, we are reliant on those present for a read-out.

The first EU-China Summit took place in 1998, in London during the UK Presidency of the EU. Since then the summits have been held on an annual basis, alternating between Beijing and the country holding the EU Presidency. This was the first summit to take place under post-Lisbon arrangements. The EU was represented

by the President of the European Council, Herman Van Rompuy, and by the President of the European Commission, José Manuel Barroso. China was represented by the Premier of the State Council of the People's Republic of China, Wen Jiabao.

During their opening statements, the EU side underlined the scope for both parties to address global challenges and for enhanced bilateral cooperation. The EU and China had many areas of common ground, even if some differences remained. As strategic partners, the EU and China had a growing interest to be more coordinated on international issues. Economic issues were of utmost importance for the relationship because China is among the EU's biggest trading partners. In moving forward, the EU and China could build on the more than 56 sectoral dialogues and the newly established High Level Strategic Dialogue.

During his opening remarks, Premier Wen said that a stable EU was in the interest of China and the world. He was pleased to see that the EU had passed through the most difficult part of the world economic crisis. He noted that the strategic partnership had made many achievements. This year, bilateral trade would reach USD 500 billion, three times more than 6 years ago. He proposed to coordinate bilateral cooperation and dialogue in all sectors and at all levels. Both sides agreed the need to continue their strategic dialogue between summits.

In the joint press communiqué that followed the Summit (please see attached), both parties agreed to further strengthen their strategic partnership. They also agreed to look for ways of improving bilateral trade and investment. Both sides welcomed the sixth EU China Business Summit. The EU and China remained committed to promoting a positive outcome at the Cancun conference later this year. Both sides welcomed areas of cooperation, including anti-piracy operations in the Gulf of Aden.

Following the Summit, President Van Rompuy and President Barroso issued some additional remarks:

―On trade and investment, they had expressed their desire to expand trade and investment and the need for a level playing field in China for EU businesses. They stressed the importance of improved market access, a better environment for investment, more effective enforcement of intellectual property rights and the opening up of public procurement. The two sides had addressed the global economic situation and agreed on the need for sustainable growth in a post-crisis world economy. Both parties underlined the importance of rebalancing global growth and reducing global imbalances. They stressed that structural reforms in Europe and in China were essential, and highlighted the role of appropriate exchange rates.

―Cooperation at the global level is essential to reach these goals. The G20, which worked very well during the crisis, should continue to deliver in a post crisis period. The EU remains committed to cooperate closely with its partners. IMF reform, in a package including quotas and its internal governance, is an important step in the reform of global governance. Europe fully supports a better representation for emerging countries and a shift of quota shares from over to underrepresented countries to improve the IMF governance. The EU underlined that enhanced representation should go hand in hand with enhanced responsibilities in global governance‖.

Both parties had an open discussion about the rule of law and human rights, which for the EU remains an important element of the dialogue with China. The EU called for progress in this area, notably in the ratification of the International Covenant on Civil and Political Rights. They noted that the two sides also discussed security issues including non proliferation, Iran, North Korea, Pakistan and Afghanistan.
9 November 2010

Letter from the Chair to David Lidington

The Committee has asked me to thank you for your 9 November letter containing a read-out of the 6 October EU-China Summit, and including the summit communiqué.

While being of great political importance, as the Committee indicated in its recent Report on similar read-out on the EU-Russia Summits, all of this is of limited interest to the Committee, since none of it relates to documents that the Committee is required to scrutinise. The Committee therefore suggests, as it did with respect to the EU-Russia Summit reports, that such read outs are of more interest to the Foreign Affairs Select

Committee (to whose Chairman and Clerk I am forwarding a copy of your letter and attachment) and that, henceforth, it would be more fruitful were you to direct such reports to it.
17 November 2010

Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and the Republic of the Philippines, of the other part

Letter from David Lidington to the Chair

I am writing to explain to your Committee why there has been a delay in the presentation of the proposed EU-Philippines Partnership and Cooperation Agreement (PCA).

The PCA text was initialled on 25 June. However subsequent to the initialling of the text officials at the Home Office asked that we take action to address unsatisfactory wording in provisions of the PCA that fall within the scope of Title V of the Treaty of the Functioning of the European Union (TFEU). Adequately addressing our concerns while avoiding reopening negotiations that were closed required the addition of some text to the Council Decision. This addition was necessary in order to clearly record the basis on which the UK participates in the provisions of the agreement which fall within the scope of Title V of the TFEU. The wording used also ensured that the Philippines will be duly notified in circumstances in which the UK (or Ireland) moves from participating as a Member State in its own right to participating as part of the EU or vice versa. The wording will accordingly provide clarity for the Philippines, for the EU and for the UK and Ireland.

The text added to the Decision is as follows:

"The provisions of *this Agreement that fall within the* scope of *Part Three, Title V of the Treaty on the Functioning* of *the European Union bind the United Kingdom and Ireland* as *separate Contracting Parties, and not* as *part* of *the European Union, unless the European Union together with the UK and/or Ireland have jointly notified the Republic* of *the Philippines that the United Kingdom or Ireland* is *bound* as *part* of *the European Union in accordance with Protocol No.* 21 *on the position* of *the United Kingdom and Ireland in respect* of *the area* of *Freedom, Security and Justice annexed to the Treaty on European Union and the Treaty on the Functioning* of *the European Union. If the United Kingdom and/or Ireland* ceases *to be bound* as *part* of *the European Union in accordance with Article* 4a of *the Protocol No.* 21, *the European Union together with the UK and/or Ireland shall immediately inform the Republic* of *the Philippines* of *any change in their position in which* case *they shall remain bound by the provisions* of *the agreement in their own right. The* same applies *to Denmark in accordance with the Protocol annexed to those Treaties on the position* of *Denmark"*

The draft Council Decision, including the additional wording, was agreed at working level under silence procedure on Friday 8 October. The decision will now go to jurist linguists before receiving final confirmation at COREPER. It is hoped that Baroness Ashton will be able to formally sign the PCA on behalf of the EU during a proposed visit to the Philippines in the New Year, which I hope will give your Committee enough time to scrutinise the Decision once it has been formally adopted at COREPER.
22 October 2010

Letter from the Chair to David Lidington

Thank you for your letter of 22 October which explains the delay in producing an Explanatory Memorandum on a draft Council Decision which would authorise the High Representative for Foreign Affairs and Security Policy to sign on behalf of the European Union a new Framework Agreement on Partnership and Co-operation (the PCA) with the Philippines. The draft Council Decision was deposited on 20 September.

You say that the additional wording which the UK wishes to include in the draft Council Decision will provide clarity as to the basis on which the UK participates in those provisions of the PCA which fall within the scope of Title V of Part Three of the Treaty on the Functioning of the European Union (TFEU). You also explain

that the draft Council Decision will be ―formally adopted at COREPER‖ before the High Representative travels to the Philippines in the New Year and formally signs the PCA on behalf of the EU.

We think that your letter raises a number of issues and would welcome further information on the following points.

First, we would be grateful if you could clarify the procedures for approving the signature of the PCA on behalf of the EU. Article 218(5) TFEU requires the Council to adopt a decision authorising signature, but your letter suggests that COREPER will ―formally adopt the draft Decision.

Second, could you please confirm that it is your intention to deposit an amended draft Council Decision incorporating the new wording in sufficient time to enable the Committee to scrutinise both the draft Decision and the PCA before the High Representative travels to the Philippines in the New Year. We would also be grateful for some indication of the timing likely to be involved in obtaining Council approval for the draft Decision.

Third, your letter does not tell us how the proposed new wording will be incorporated in an amended draft Council Decision. We assume that it will be by means of a recital.

Fourth, your letter does not tell us whether the legal base for the draft Council Decision will be amended to cite the relevant Treaty Articles in Title V of Part Three of the TFEU on which the PCA is based. We think this is important for the following reasons. Article 2 of the UK's Opt-In Protocol provides that no provision of any international agreement concluded by the Union *pursuant to* Title V of Part Three of the TFEU shall be binding upon or applicable to the UK as part of EU law unless the UK has expressly opted into such a provision. While there would seem to be little doubt that some elements of the PCA fall within the scope of Title V, the absence of a Title V legal base makes it impossible to ascertain with any certainty which provisions of the PCA are within Title V, and are thus subject to the UK's opt-in, and which are not. It follows that it is also difficult to see how the wording you have proposed makes it any easier for the parties to the PCA to ascertain which provisions of the Agreement are binding on the UK as a matter of EU law, and which are binding as a matter of international law.

Finally, we would like to know whether the recital included in the preamble to the PCA, as initialled in June, which explains the UK's position will be amended to mirror the new wording proposed for the draft Council Decision.

I look forward to receiving your response.
24 November 2010

A letter on the Restricted European Commission Communication: *14907-10 on the Participation of the EU in the Negotiations on the Food Aid Convention*

Letter from Stephen O'Brien to the Chair

I have attached for your information the restricted European Commission Communication that sets out the history of the EU's involvement in the Food Aid Convention and what its position is likely to be in the negotiating process. As this Communication is restricted and contains the EU negotiating position, it is for the attention of the Committee only and is not for release on public information sites.

The Food Aid Convention (FAC) is an international agreement whose signatory members commit to providing annual minimum amounts of food aid. The original intention was to counter the observed reduction in food aid deliveries when food commodity prices are high, by providing a floor level of minimum deliveries. Members are Argentina, Australia, Canada, the European Union and its Member States, Japan, Norway, Switzerland, United States, who together make up the Food Aid Committee.

In June 2010 it was decided to extend the 1999 Food Aid Convention for one year, until July 2011, on the understanding that negotiations for a future Convention would start during 2010. On 3 November 2010,

COREPER confirmed this agreement and recommended that the Council, in accordance with Article 216 of the Treaty on the Functioning of the EU; a) authorises the Commission to participate on behalf of the EU in the negotiations for a Food Aid Convention; and b) adopts the negotiating directives agreed by members of the Council Working Group for Humanitarian Aid and Food Aid (COHAFA).

The first set of negotiations is due to begin in London on 14 December at the 103rd session of the Food Aid Committee, and be completed by June 2011, prior to the formal session of the Food Aid Committee in June 2011. The Commission will report regularly to EU Member States in COHAFA on progress in the negotiations, and inform the European Parliament in the course of the negotiations.

After the negotiations have been completed, we will inform the Committee of the outcomes in either an Explanatory Memorandum or in a further information letter.
8 December 2010

Letter from the Chair to Stephen O'Brien

The Committee has asked me to thank you for sending them a copy of the Commission paper setting out the history of the EU's involvement in the Food Aid Convention and what its position is likely to be in the negotiating process. It duly noted that it is for the attention of the Committee only, and not for wider dissemination.

You say that you expect the negotiations to be completed by June 2011 and that, after they have, you will inform the Committee of the outcome. The Committee presumes that there will need to be a Council Decision of some sort prior to formal session of the Food Aid Committee in June 2011 to which you refer. That being so, the Committee looks forward to it being deposited for scrutiny in the normal way, so that the House may at least be aware of what the future holds with respect to this key aspect of the EU's development assistance activity.
19 January 2011

EU FINANCIAL INSTRUMENTS

Letter from David Lidington to the Chair

I am writing to you in response to the Committee's decision to hold a recent Explanatory Memorandum (EM) under scrutiny. The EM in question concerned proposed amendments to the regulation governing the EU's financial instrument for cooperation with industrialised countries and territories (ICI).

The Committee asked for further information to be provided once the European Parliament (EP) has responded to the Council's proposed amendments. The EP will consider these amendments in the coming months. I would like to assure the Committee that, once a response has been received by the Council, I will provide the necessary information to the Committee. As requested, I will also report on the success of the new FCO Parliamentary Scrutiny procedures in six months' time.

In addition, the Committee asked that I comment on the Commission's goal of providing the EP with "appropriate oversight over the formulation of external cooperation strategies and the proper implementation of external financial instruments and whether this safeguards or changes the status quo. The Commission's aim is to safeguard the status quo by encouraging the EP to accept an enhanced scrutiny process, but does not seek to give the EP increased control or veto over external programmes.
3 February 2011

Letter from the Chair to David Lidington

The Committee has asked me to respond to your letter of 3 February concerning its decision to hold under

scrutiny, not your covering EM, but the proposed amendments to the regulation governing the EU's financial instrument for cooperation with industrialised countries and territories (the so-called ICI).

As you say, the Committee asked for further information in fact, a further EM to be provided once the EP has responded to the Council's proposed amendments. The Committee notes your assurance that, once a response has been received by the Council, this will be forthcoming.

In addition, the Committee asked for comment not on the Commission's goal of providing the EP with appropriate oversight over the formulation of external cooperation strategies and the proper implementation of external financial instruments; but an explanation in the further EM on whether the outcome safeguards or changes the *status quo*. We note that their aim is to safeguard the *status quo* by encouraging the EP to accept an enhanced scrutiny process, and to seek not to give the EP increased control or veto over external programmes. What we want to know is if they succeed.
16 February 2011

THE EU AND BOSNIA-HERZEGOVINA

Letter from David Lidington to the Chair

I am writing in confidence to provide an update on the Government's approach to international community policy towards Bosnia and Herzegovina (B&H). This comes ahead of a planned discussion at the EU Foreign Affairs Council on 21 February.

The Government remains very concerned about the situation in B&H, where coalition negotiations following last autumn's elections have so far failed to deliver new governments at the State and Federation-entity levels. We are concerned about the almost complete lack of progress on EU-related and other important reforms and the rise of provocative and nationalist rhetoric, especially during last year's election campaign. Previous scrutiny history on this is attached.

The onus is clearly now on Bosnian politicians to form new governments quickly and to focus on the reform agenda, and we are giving this unequivocal message in country.

However we also believe that a clear and united international community voice is needed to press clearly and firmly for progress. To this end, the Government believes that the EU needs to take on a more proactive role in B&H. This would allow it to maximise the incentives provided by B&H's EU perspective and future accession process and where necessary to use deterrents and take decisive action to address blockages and threats to stability.

While we believe that the EU should move into the foreground in this way in B&H, we also believe that stability is not firmly embedded in the country. Now is clearly not the time to give up the internationally-mandated executive powers at the disposal of the international community, namely the civilian 'Bonn Powers' of the international High Representative and the Chapter VII executive mandate of the EU military force EUFOR Operation Althea.

We therefore plan, at the February Council to endorse an approach whereby:

• **The EU presence in Bosnia and Herzegovina is reinvigorated and reinforced.** In line with the implementation of the Lisbon Treaty, the roles of EU Special Representative and Commission Head of Delegation are combined into one 'double hatted' position.
The mandate of the EU representative is reinforced so that he/she will have the ability to make use of both the incentives provided by the EU accession process, and certain restrictive measures such as travel restrictions and asset or funding freezes. (These are yet to be defined but the Government will press for the strongest possible 'EU toolbox')

• **The High Representative and his executive powers are maintained** in an ongoing Office of the High Representative (OHR) - separate (or 'decoupled') from the EU presence and which may eventually be located outside of Bosnia and Herzegovina. The conditionality set by the Peace Implementation Council in February

2008 for the eventual closure of the OHR continues to apply. Close co-ordination mechanisms will be needed to ensure that the EU and OHR work together and co-ordinate the application of their respective powers. The Government will press firmly for this in negotiation.

• **The executive (Chapter VII) mandate of EUFOR Operation Altheas is maintained,** even if EU troop drawdowns mean that this executive mandate needs to be serviced by fewer troops on the ground.

These are the broad lines of the approach which I understand will be put on the table by Baroness Ashton and Commissioner Fule at the 21 February Council, and which the UK has very proactively shaped through our clear insistence on the need for the EU to engage more effectively, while working closely within the Peace Implementation Council to maintain the conditionality in respect of the eventual closure of the OHR.

The Government will therefore be strongly supportive of the package and will insist on the inclusion of each of its elements, which we consider provide the right balance of incentive and deterrent We believe that such an approach secures the right balance between retaining the international mechanisms and safeguards to ensure continued stability in B&H whilst at the same time strengthening and increasing the level of EU engagement.

I should be happy to provide further information on this, or to debrief the committees in more detail after the Council.
14 February 2011

Letter from the Chair to David Lidington

The Committee has asked me to thank you for your letter of 14 February, outlining the approach that you will be supporting at next week‘s Foreign Affairs Council concerning the reinforcement and reinvigoration of the EUSR‘s role in B&H.

The Committee looks forward to scrutinising the EM and draft Council Decision that will no doubt emerge in due course, and in the meantime asks only that it fully explains the background to and *the approach agreed at the FAC, and is submitted in good time for proper scrutiny.*
16 February 2011

EU-Burma: restrictive measures

Letter from David Lidington to the Chair

In line with our commitment to proper scrutiny of EU business, the Government is committed to keeping Parliament informed on issues relating to each EU Presidency programme. I apologise that we have not been able to provide you with this information earlier. This is because of the later-than-usual publication of the finalised Hungarian Presidency programme.

I attach an analysis of the Hungarian Strategic Framework (Presidency priorities) and a programme for the Hungarian Presidency. I have also placed a copy of the Strategic Framework and programme in the library of the House, in the interest of informing all members. I very much look forward to hearing your views and engaging with you on these issues.

We seek to steer the discussion towards emphasising the need to bring forward policies which promote growth, noting the UK's ambitions for the EU in this area.

I have decided to end the practice of publishing a separate "Command Paper" on the EU Presidency. This glossy publication duplicated the strategic content of this note, albeit with somewhat more detail, and was judged unnecessary at a time when we are bearing down on publishing costs across government.
15 February 2011

Letter from the Chair to David Lidington

The Committee has asked me to thank you for your letter of 17 February 2011 in which you set out the

challenges that you anticipate in connection with negotiating the next roll-over and suggested that the Committee might accordingly consider granting a waiver of scrutiny.

The situation you describe would appear to encompass more than the EU As you no doubt know, the BBC reports that the US are in talks with the leadership, the NLD are also seeking talks with the US, EU, Canada and Australia to see "when, how and under what circumstances sanctions might be modified in the interests of democracy, human rights and a healthy economic environment", and that, since her release in November, Aung San Suu Kyi has called for greater foreign investment, saying her country has been "left behind".

The Committee thus understands that the negotiating process may be difficult and go down to the wire. But it feels that, much as it appreciates your frankness, what you are proposing would amount to a change of scrutiny procedure, to one where, in effect, a mandate is negotiated ahead of a Council meeting. The Committee has no wish to encourage this: rather, it feels that in the final analysis, it continues to be for you (and any Minister) to balance the Government's scrutiny obligations with whatever other considerations may be in play at the time.

The Committee would nonetheless be grateful if you would continue to keep it informed of developments and looks forward to scrutinising the EM and Council Decision that will emerge in due course, and in the meantime asks only that it fully explains the background to and the approach eventually agreed.
2 March 2011

APPROACHING ROLLOVER OF EU COUNCIL DECISION CONCERNING RESTRICTIVE MEASURES IMPOSED AGAINST BURMA

Letter from David Lidington to the Chair

You asked to be kept updated on negotiations ahead of Parliamentary recess on 6 April. As I have previously mentioned, the Government is negotiating to secure the toughest possible measures on Burma. On 9 March, 16 March, 18 March and 22 March, UK officials took part in discussions in Brussels with EU counterparts to agree principles underpinning the EU's approach. We hope an agreement will be reached by 1 April on the broad principles, but further negotiations may be necessary. Consensus will then be needed on the technical details to roll over the restrictive measures. This should be agreed in time for the Council Decision to be adopted at the 12 April Foreign Affairs Council in Luxembourg.

As your committee is aware the Government's position is that the political situation in Burma reflects the regime's clear intention to maintain its grip on power. The Government is of the firm view that there should be no weakening of EU sanctions in response to the flawed constitution, the rigged elections and the supposedly new government The Government has therefore argued that the current restrictive measures should be renewed for a further 12 months.

However, a number of other EU Member States believe that recent events in Burma constitute limited progress and as such the EU should respond by showing itself ready to engage with the regime.

After consultations with EU partners (including the meetings listed above) and detailed conversations with Aung San Suu Kyi, to establish her views the Government is considering two steps:

• To lift the prohibition of EU or national high-level visits to the country (i.e. at the level of Political Director and higher) for a one year period, with the conditions that visitors must see the genuinely democratic opposition including Aung San Suu Kyi and that visits are coordinated through the EU. The Government anticipates that this will bolster the opposition including Aung San Suu Kyi, who has called publicly for EU visits, and increase the political role of opposition groups in Burma. There is widespread support for this approach in the EU.

• To list all new senior Government members (Le. to make them subject to the assets freeze and travel ban), in line with the existing principles, but to immediately suspend for a year the listing of lifelong civilian Ministers who are not already subject to EU sanctions. This would retain the principle that all senior members of the Government (Ministers and Deputy Ministers) should be listed but would mean in practice that the new

civilian officials were not subject to the travel ban or the assets freeze. Senior members of the government and military currently listed would continue to be subject to EU sanctions. Listing but then suspending these officials would make it clear that they are on notice and will be judged on their actions. But it could help empower the civilian elements within the Government and influence policy by exposing them to international views and best practice. This is the topic of most debate in the EU. Some Member States have argued that no new Ministers should be listed. Others have argued that Ministers who have retired from the military should have their listings suspended too. A third group argue that these categories should be delisted (Le. not listed at all rather than the listing being suspended).

Whether the Government is able to accept such steps depends on the detailed outcome negotiated and in particular ensuring that the measures are retained for 12 months and the remaining aspects of the sanctions regime are left intact. Negotiations continue in Brussels on those remaining aspects, in particular the sectoral ban on trade and investment in timber, precious metals and gems. Some EU Member States are pressing for a narrowing of measures affecting specific sectors. The Government is resisting such calls and is negotiating to maintain the existing sectoral bans.

We still expect that a draft Council Decision will not be circulated before Parliamentary recess and as such this will not allow for your Committee to scrutinise it before II needs to be adopted. I therefore request that you consider issuing a scrutiny waiver on this occasion. I will ensure that your Committee receives an Explanatory Memorandum on the amended Council Decision that is adopted in respect of the restrictive measures imposed on Burma on your return from recess at the end of April.

I thought it would also be useful to set out the recent history regarding documents that the Scrutiny Committees have cleared on restrictive measures imposed on Burma. On 2 June 2010 an EM was submitted to accompany Council Decision 2010/232/CFSP of 26 April 2010 renewing restrictive measures against Burma/Myanmar. This was cleared by the Commons as "politically important" on 8 September (ESC 31494, 1st Report, Session 2010/11). The Lords sifted the document for referral to Sub Committee C on 23 June and are still waiting for clearance.

On 11 March 2010 an EM was submitted to accompany a proposal for a Council Regulation (EU) amending Regulation (EC) No. 194/2008 renewing and further strengthening the restrictive measures in respect of Burma/Myanmar. This was cleared by the Commons as "politically important, further information requested" on 17 March (ESC 31405, 15th Report, Session 2009/10). The Lords cleared the document on 8 April after referral to Sub-committee C. FCO officials will be writing separately to invite you to a private briefing session on Burma on Wednesday 30th March.
28 March 2011

Letter from the Chair to David Lidington

EU-BURMA: RESTRICTIVE MEASURES
The Committee has asked me to thank you for your letter of 28 March in which you set out developments since your 17 February letter on negotiating the next roll-over and the nature of the revised Council Decision that you are seeking. You also asked that, in view of the likely timetable and the impending Easter recess, the Committee should again consider granting a waiver of scrutiny.

As before, the Committee understands that finalising the negotiating process may go down to the eve of the April Foreign Affairs Council. But it continues to feel that, much as it appreciates your continued frankness, it cannot provide a mandate ahead of a Council meeting, it remains for you (and any Minister) to balance the Government‘s scrutiny obligations with whatever other considerations may be in play at the time. The Committee therefore looks forward to scrutinising the EM and Council Decision that will emerge in due course and, in the meantime, once again asks only that it fully explains the background to and the approach eventually agreed.
30 March 2011

UPDATE ON BURMA RESTRICTIVE MEASURES

Letter from David Lidington to the Chair

I am writing in order to keep you informed of an update to the annexes of the Council Decision concerning restrictive measures imposed on Burma.

When we secured agreement with EU partners to the roll-over of sanctions on Burma in April 2011 we agreed to a technical review of the annexes in order to ensure they remain accurate and relevant. This review has now been completed by the EU Missions in Rangoon and the recommendations have been agreed in the EU. The UK mission In Rangoon played a prominent role in the review.

We agreed that the EU should review the list of companies operating in the three sectors subject to trade and investment restrictions (timber, gems and precious metals). The outcome has seen a net reduction in around 250 entities to Annex I of the Council Decision. These companies fall into three categories: (i) repeated entries; (ii) companies which are no longer operating; and (iii) companies which are now operating in sectors outside the sectoral ban. In addition to some entities being de-listed around 40 new companies that have started to operate in those sectors are being added to the list.

We also agreed to de-list from the EU travel ban and assets freeze, Ministers who had retired from their positions and the military, and who had no connection to previous human rights abuses. The number of individuals falling into this category is around 120 and these are therefore being de-listed. This figure includes spouses and family members of retired Ministers.

The amended Council Decision does not introduce any new measures or change the substance of the sanctions that are in place but I wanted to ensure that your Committee is kept updated and are aware of the changes being made.

4 August 2011

Letter from the Chair to David Lidington

The Committee has asked me to respond to your letter of 4 August 2011, in which you provided it with an update to the annexes of the Council Decision concerning restrictive measures imposed on Burma that the Committee cleared on 27 April.

You noted that, in April, a technical review of the annexes was agreed in order to ensure they remained accurate and relevant; that this review has now been completed by the EU Missions in Rangoon and the recommendations have been agreed in the EU; and that the UK mission in Rangoon played a prominent role in the review.

You went on to explain that it was agreed that the EU should review the list of companies operating in the three sectors subject to trade and investment restrictions — timber, gems and precious metals — and that the outcome has seen a net reduction in around 250 entities named in the Council Decision; that these companies fall into three categories: (i) repeated entries; (ii) companies that are no longer operating; and (iii) companies that are now operating in sectors outside the sectoral ban; and that, in addition to some entities being de-listed, around 40 new companies that have started to operate in those sectors are being added to the list.

You also explained that it was also agreed to de-list from the EU travel ban and assets freeze, Ministers who had retired from their positions and the military who had no connection to previous human rights abuses — around 120, which you said includes spouses and family members of retired Ministers.

The Committee is grateful to you for providing this update. However, we have some concerns about the non-deposit of these changes on this occasion.

In not having deposited these amendments to the Council Decision, you were no doubt relying on the protocol agreed between Parliament and the then government (which was subsequently issued as Cabinet Office guidance) that minor changes to lists of people and/or organisations subject to restrictive measures do not need depositing the purpose of the agreement being to avoid the Committee being inundated with such regular

amendments, where a name is deleted and/or another is added, within an established policy framework that has already cleared scrutiny. However as we have emphasised to the FCO at official level, what constitutes "minor changes to lists of people and organisations subject to restrictive provisions in existing measures" (the wording used in the Cabinet Office guidance) is a matter of judgement; that the guidance is just that, rather than being tablets of stone; and that consultation should be the order of the day if there is any doubt as to their significance.

It has been suggested to the FCO scrutiny coordinator that, had this taken place in the usual way, we would have asked for these amendments to have been deposited with an Explanatory Memorandum; because, given the background and the present situation in Burma, it is difficult to see at first blush how an operation of this nature and on this scale amount to only "minor changes to lists of people and organisations subject to restrictive provisions in existing measures".

The Committee is conscious of your desire for openness; but, commendable as that is, it is not a substitute for the proper process of Parliamentary scrutiny. This, the Committee feels, is a good example of the need for consultation in order to ensure that the right course is taken in each case.
14 September 2011

Consultation on enhanced parliamentary scrutiny of EU business in the Area of Freedom, Security and Justice

Letter from David Lidington to the Chair

I am writing in follow up to my letter of 7 February, in which I set out our plans for taking forward the arrangements included in my statement to the House of 20 January. As envisaged in that letter, officials from my department and from the Home Office and Ministry of Justice recently met the Clerk and Legal Adviser to your Committee along with the Clerks and Legal Advisers to the Lords Select Committee on the EU for working level discussions on how the new arrangements might work in practice. This meeting included more detailed discussion of how the new arrangements might work, including how they will dovetail with the undertakings given by Baroness Ashton.

As officials explained at that meeting, the strict 3 month timetable for opt-in decisions means it is unlikely that we will be able simply to overlay the new commitments on top of those that already exist under Ashton. Instead we envisage that a twin-track approach is likely to be needed whereby, for each proposal, there will need to be a point at which we agree whether the opt-in decision is subject to the Ashton arrangements or the enhanced arrangements set out in my statement. In either case, the commitment to table an Explanatory Memorandum within 10 working days of publication of the proposal will remain. The commitment not to opt in within the 8 week period unless there are exceptional reasons for doing so will also remain. However, among the practical questions discussed at the meeting was how, where a debate is offered by the Government, to reconcile the need to schedule the debate and agree the motion setting out the Government's recommended approach with the need to allow adequate time for Government analysis of the proposal, including consultation with stakeholders and consideration of the Committees' views. I can assure you that our intention will be to reach workable arrangements that enhance scrutiny and enable the Government to opt in when it is in the national interest and supported by Parliament.

The meeting also touched on the issue of how to handle recess periods. The commitment of the Committees to September sittings will certainly help to deal with the long summer recess. However, we will still need to decide how to deal with opt-in decisions where the deadline falls in late July or August or during other recess periods. It is important that the Government should still be able to opt in to such measures, if it is in our national interest to do so. One option might be that if there were an opt-in decision of particular controversy or interest to Parliament where the deadline fell during a recess period, the Government would commit to an earlier debate on a take note motion, to give the Committees the chance to express their views in advance of the Government's decision. However, the disadvantage of this approach is that the debate might have to be held before there had been time for a full analysis of the proposal. Another idea would be the possibility of offering a debate to a joint committee of both Houses established for the purpose, which would sit during recess. I am open to any constructive solutions to this problem and would be interested in your views on these

ideas or possible alternative approaches.

Under the new arrangements, Parliament will have far greater powers to influence the eventual opt-in decision. I very much hope that the new commitments will also enhance the ability of both Houses to hold the Government to account and retain the best elements of the current system, including detailed scrutiny of new proposals. The Committees' views will continue to be extremely influential, for example in signalling whether the level of parliamentary interest in a decision means that it should be subject to a debate on Government time.
3 March 2011

Letter from the Chair to David Lidington

Thank you for your letter of 3 March in which you express the Government's commitment to enhance Parliamentary scrutiny of UK opt-in decisions in the Area of Freedom, Security and Justice.

We look forward to discussing the practical arrangements for implementing the Government's commitment at our forthcoming evidence session.
9 March 2011

Decision of the Representatives of the Governments of the Member States, meeting within the Council, authorising the European Commission to negotiate, on behalf of the Member States, the provisions of a Framework Agreement between the European Union and its Member States, of the one part, and Canada, of the other part, that fall within the competences of the Member States

And

Council Decision authorising the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy to negotiate, on behalf of the European Union, the provisions of a Framework Agreement between the European Union and its Member States, of the one part, and Canada, of the other part, that fall within the competence of the European Union

Letter from David Lidington to the Chair

I am writing to let your Committee know that on 6 December the Council and the Member States meeting within the Council, by two decisions, authorised the negotiation of a Framework Agreement between the European Union and its Member States and Canada. This letter reflects our commitment to engage with the Committees by keeping them informed on areas that will require scrutiny at a later date. There is no clear date for when this might be, but current expectations are towards the end of this year/early next year.

The intent is for a new Framework Agreement to replace the 1976 Framework Agreement for Commercial and Economic Cooperation, and subsequent sectoral Agreements. The Commission had argued that the 1976 agreement was outdated and did not take into account the possibilities of closer co-operation with the EU post Lisbon. Therefore it is hoped that the new agreement will cover enhanced political dialogue and fields such as justice, freedom and security, economic co-operation (on Issues that are not addressed by the CETA negotiations mentioned below) and additional areas of common interest (e.g. Human Rights, cooperation on non-proliferation, cooperation on development etc).

There is no clear time frame for the negotiations to end, but they will be conducted in parallel with the ongoing negotiations for the EU Canada Comprehensive Economic and Trade Agreement, which the European Commission hopes to complete by the end of this year. A successful conclusion of the CETA is estimated to be initially worth around an additional £423 million per year for the UK economy. It is the Commission's

intention to create a legally binding link between the two agreements as per established EU policy.

As the mandate for the Framework Agreement covers areas that fall within the competences of the Member States and the European Union, the Commission will lead the negotiations on behalf of both the Member States and the Union without prejudice to future decisions on the final legal nature of the Agreement. This will be determined at the end of the negotiations. In addition, The High Representative, not the Commission, will negotiate those items relating to the field of the common foreign and security policy.
17 March 2011

Letter from David Lidington to the Chair

Romania's progress has been slower than we had hoped. Last summer's report was particularly disappointing. The interim report in February rightly set out the positive legislative steps that have been taken since then, such as the adoption of the new National Integrity Agency law and the Small Reforms Law, and the impressive track-record of the National Anti-Corruption Directorate (DNA). But much remains to be done before Romania achieves the CVM benchmarks. Cooperation between all political and judicial actors needs to be strengthened: Parliament and parts of the judiciary continue to be obstructive when their interests are challenged.

There are some encouraging signs, such as the growing body of reformists in the judicial system with whom the British Embassy in Bucharest works closely. They recently sponsored workshops about asset recovery and about resolving procedural delays in high-level corruption trials.

A sanctions mechanism, which suspended Member States' obligations to recognise judgements issued by Romanian courts, was built into the CVM but it expired in 2009. I do not believe that further sanctions would have the desired effect in terms of galvanising reform. Rather they carry a risk that Romania (and Bulgaria) would become disengaged from the reform process. Our strategy now is to ensure that the reform process becomes self-sustaining and not reliant on external pressure. For this to happen we are drawing explicit links between an effective judiciary and anti-corruption policies, and Romania's ability to attract foreign investment. We have
some way to go before achieving this virtuous cycle, so we do not have a target date
to lift the CVM.

I understand the committee's concern that the EU learns the lessons from the accession process with respect to Romania and Bulgaria, particularly with regard to Croatia. Since the accession of Romania and Bulgaria the enlargement process has been strengthened, Including the introduction of a new chapter covering the judiciary and fundamental rights (Chapter 23).

The Government will continue to monitor Croatia's progress and ensure that this chapter is closed on the basis of a thorough technical assessment against the benchmarks, including establishing the necessary track records to ensure that reforms are sustainable.
05 April 2011

Letter from the Chair to David Lidington

The Committee considered the most recent Commission report at its meeting on 16 March. I enclose a copy of the relevant Report chapter for ease of reference.

The Committee has always been in favour of enlargement, provided conditionality has been met. In the case of both Romania and Bulgaria, as the Committee made plain in a number of its earlier
Reports, neither had properly fulfilled the full range of the Copenhagen criteria when they acceded - hence the invention of the CVM.

Under the CVM, it has been very much a case of incremental steps forward, other steps backward, some marking of time, and an overall impression of a continuing lack of sustained commitment by the political class as a whole in both countries. Now, it is equally plain that, four years on, and all the Commission's and other Member States' endeavours and good faith notwithstanding, both have still to meet the benchmarks laid down by the Commission in an earlier assessment:

o an autonomously functioning, stable judiciary, which is able to detect and sanction conflicts of interests, corruption and organised crime and preserve the rule of law";

o "concrete cases of indictments, trials and convictions regarding high-level corruption and organised crime";

o "the legal system is capable of implementing the laws in an independent and efficient way".

Come last summer, in Romania, there had been serious backsliding, particularly by the Romanian parliament; now, the Commission says Romania has responded over the past six months to the recommendations in the Commission's last full report constructively and re-invigorated the reform process. However, there remains evidence of parliament continuing to undermine the process, particularly regarding the National Integrity Agency This raises two concerns. The first is: for how much longer is this process to continue without any sanctions being applied? The Committee would be grateful for your views on this.

Secondly, as the Committee has made clear in several Reports and in an evidence session with the previous Foreign Secretary, it is concerned that the mistakes made in the accession process with respect to Romania and Bulgaria are not repeated, particularly with regard to Croatia. We understand that the Commission's recently adopted progress report will shortly be submitted for scrutiny. We trust that it will demonstrate that both the Commission and the Government is as determined as we are to ensure that, before accession, Croatia must be able to demonstrate persuasively, before accession, that it has achieved the benchmarks that Romania (and Bulgaria) has yet to reach.
21 March 2011

COMMON UNDERSTANDING ON THE DELEGATION OF LEGISLATIVE POWER TO THE COMMISSION UNDER ARTICLE 290 OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION (TFEU)

Letter from David Lidington to the Chair (for information)

I write to update you about progress on the Common Understanding between the Council, Commission and European Parliament, which seeks to set out "the practical arrangements, agreed c1arifications'and preferences applicable to delegations of legislative power" under Article 290 TFEU, The Common Understanding is not legally
Binding. It does not formally require parliamentary scrutiny. However, I am sending it to the committee because, as a gentleman's agreement between the three institutions, it is likely to shape the way in which delegated acts will be taken in the future. The text of the Common Understanding was agreed by the European Parliament on 3 March 2011, thus concluding the adoption process. It was officially sent to the Council, and therefore shared with Member States, on 4 April 2011.

Article 290 does not require further legislation to implement it. However, to ensure a coherent approach to the adoption of delegated acts, the Commission published a Communication on 9 December 2009 that set out the practical arrangements for delegated measures. This was welcomed by the Council and was submitted for scrutiny to UK Parliament committees under EM 5107/10 of 19 January 2010, Since then the Council, Commission and European Parliament have been developing a Common Understanding to build on the Commission Communication. The process leading up to it has been particularly slow because both the Council and the European Parliament sought to reach an agreement on the Comitology Regulation (which came into force on 1 March 2011) before finalising practical arrangements in relation to delegated acts.

The following features were secured in the negotiations on the Common Understanding:

Consultation of the Council and the European Parliament (point 4)

Under Article 290, there is no obligation on the Commission to consult Member States, the Council or the European' Parliament before adopting Delegated acts.

However, the Commission commits in the Common Understanding to consult both the European Parliament and the Council "in advance and in a transparent way". The Commission has informally indicated that Member State representatives will be invited to expert groups to discuss draft delegated acts in advance of their adoption. This gives Member States the opportunity to influence the content of delegated acts and ensures that the Council will be better placed to decide whether to exercise its powers of revocation and objection.

ii) Consultation of national experts (point 4)

Along with other Member States, we have secured a strong commitment by the Commission to consult national experts, although it was under no legal obligation to do so. This ensures that Member States are well informed about forthcoming delegated acts and that their views and experience are taken into account.

iii) Duration of delegation (points 8 and 9)

A basic act may specify if the delegation of powers to the Commission is for a fixed or indefinite duration. The UK's preference is for the power to adopt delegated acts to be granted for a fixed period of time, unless there is good justification to the contrary.

When the delegation is granted for a fixed period of time, we have avoided a blanket rule that renewal should be automatic. The Common Understanding also clarifies that whatever the duration of the delegation, this does not affect the Council's right to revoke it at any time.

iv) Period for objection (points 10 and 11)

Without prejudice to the urgency procedure, we have secured in principle a period of no less than two months, extendable by a further two. months within which the Council may decide whether to object to the delegated act. This should provide enough time for the Council to take an informed decision. If the Council does object, the delegated act does not enter into force.

v) Urgency procedure (points 12-14)

The Common Understanding provides that the urgency procedure should be reserved for exceptional cases, and that its use should be duly justified by the legislator in the basic act. A delegated act adopted under the urgency procedure enters into force without delay, however, the Commission is required to repeal it immediately should the European Parliament or the Council object.

vi) Standard clauses

The Common Understanding contains standard clauses which the institutions agree should be used whenever possible although they can-be modified as circumstances demand.

Despite initial resistance by the Commission, these include a recital on Commission consultation with the European Parliament and the Council.
19 April 2011

AMENDMENTS TO THE RULES OF PROCEDURE OF THE COURT OF JUSTICE, GENERAL COURT AND CIVIL SERVICE TRIBUNAL (32570, 32585 AND 32593)

Letter from David Lidington to the Chair

Thank you for your letter of 30 March 2011, asking for the total cost in establishing the e-Curia system in the three courts making up the Court of Justice of the European Union (CJEU).

The costs incurred on the e-Curia project up to and including the year 2011 are as follows:

Development	-	€795,000
Maintenance	-	€50,000
Infrastructure	-	€410,000
Total	-	€1,255,000

Future cost will depend on the uptake of the e-Curia system and it's according developments. Subject to this the following estimates have been provided by the Deputy Registrar's office of the CJEU for the years 2012 and 2013:

Development	-	€60,000
Maintenance	-	€100,000
Infrastructure	-	€150,000
Total	-	€310,000

The e-Curia system is based on the principle that it will be without any cost to its users. The users can expect to make savings on copying, postage and staff time, and enjoy a more user-friendly system.
18th April 2011

Letter from the Chair to David Lidington

Thank you for providing the costs of setting up and maintaining e-Curia in your letter of 18 April.

The Committee was very grateful for this information.
11 May 2011

EU Sahel Strategy: FCO Business During Recess

Letter from David Lidington to the Chair

I am writing in response to your letter of 5 April 2011, in which you raise concerns regarding EU decisions that may require scrutiny during parliamentary recess, including possible decisions on the EU Sahel Strategy. Your comments on the issues outlined were helpful, and appreciated.

I hope that I can now clarify some of the points you raised.

EU Member States requested two years ago that the EU develop a strategic approach to its engagement in the Sahel region of West Africa that joins together security and development. Existing EU frameworks were not suited to tackling the complex and interlinked challenges faced in Mali, Mauritania and Niger. The Commission began this process before passing it in time to the newly appointed High Representative and EU External Action Service.

The EU Foreign Affairs Council on 21 March concluded that it would welcome the Strategy's presentation. I therefore expect, and have sought reassurance to this effect, that Member States will be afforded the opportunity to further develop the Strategy before formal adoption and implementation. Before the EAS can commit to actions on the basis of the Strategy, it will need to seek the explicit approval of Member States.

Discussions continue in EU forums. The EU Political and Security Committee will consider the way forward for the EU Sahel Strategy in early May, and refer proposals to the relevant Brussels working groups. We will insist on the need to fulfil our obligations to parliamentary scrutiny.

28 April 2011

Letter from the Chair to David Lidington

The Committee has asked me to thank you for your letter of 28 April 2011 in which you brought the Committee up to date on the proposed EU Strategy for the Sahel.

The Committee is glad that you will "insist on the need to fulfil our obligations to parliamentary scrutiny", and is looking forward to receiving a copy of the Strategy, and an EM, once the former emerges from the discussion process and is ready for discussion by the Council.
11 May 2011

UNITED NATIONS GENERAL ASSEMBLY RESOLUTION ON THE PARTICIPATION OF THE EUROPEAN UNION IN THE WORK OF THE UNITED NATIONS

Letter from David Lidington to the Chair

I am writing to update your Committee on the United Nations General Assembly (UNGA) Resolution on "Participation of the European Union in the Work of the United Nations". The resolution was adopted on 3 May in the UN General Assembly by a vote of 180 in favour with none against and 2 abstentions, Syria and Zimbabwe.

As the Deputy Prime Minister said in his address to the UN General Assembly in September 2010, it is important that the vital role of the EU in promoting development and prosperity can be adequately represented in the General Assembly.

The 3 May result achieves this, while preserving our other interests on how EU Member States are represented externally. Throughout the negotiation of this resolution, the UK has consistently supported a consensual approach to address the concerns of other UNGA members.

The resolution (text attached) allows technical and procedural changes to ensure the EU can continue to be represented as effectively as it was before the new Presidency arrangements as a result of the Lisbon Treaty. Before the resolution, the EU's rotating Presidency or another EU Member State represented the EU agreed position in the UNGA. This UN resolution now allows that, while remaining an observer, the EU itself can represent common agreed positions of Member States in the UNGA. EU representatives – including the President of the European Council or Baroness Ashton – can now be inscribed on the list of speakers among representatives of major groups in order to make early interventions and may be invited to participate in the general debate of the UNGA, subject to the limits set out in the resolution text. It remains, however, the case that the EU representatives can only do this if the UK and other member states authorise them to do so. Furthermore, EU representatives speak and act on behalf of the 27 Member States with their authorisation, not in addition to them.

The resolution underlines the intergovernmental nature of the UNG A, whose membership is limited to UN member States. It does not affect the UK's sovereignty; nor does it affect the UK's ability to act independently in the UN or internationally. The rights of individual EU Member States are not curtailed. Moreover, the resolution makes very clear that the EU will remain an observer. Its status in the UNGA is unchanged.

The effect of the resolution is limited to the UNGA (including Committees, working groups, international meetings and UN conferences). It does not affect the rights or status of the EU or Member States in any other UN body or international organisation. The UK's position in the UN Security Council is not affected.
13 May 2011

Regulation laying down the rules concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (32506)

Letter from the Chair to William Hague

This Regulation lays down the procedures by which the Commission will adopt legally binding implementing acts under Article 291 of the Treaty on the Functioning of the European Union. The power given to the Commission by this Article is particularly significant (not dissimilar to the Government's power to legislate through statutory instrument), and now covers the EU's common commercial policy. So the main issue for the Government, and for the Committee, has been to ensure that there is adequate *ex ante* control of the Commission's power by Member States.

The Minister for Europe deposited an Explanatory Memorandum on this proposal on 11 June 2010. The Committee reported on it at its first meeting after the election, on 8 September. It agreed with the Minister that the proposal gave too much discretion to the Commission, and asked him to send his views on the latest Presidency draft as well as progress reports on the negotiations.

On 28 September the Minister wrote back with his comments on the latest Presidency draft, attached to the letter, but asked the Committee to treat the draft in confidence because it was the basis of ongoing negotiations.

On 20 October the Committee replied. It noted the improvements in the text but asked the Minister to deposit a public version of the revised proposal, with further commentary where necessary, so that it could report it to the House given its importance.

The Committee never received a reply to that letter.

The next correspondence it received was on 3 February 2011, asking it to release the proposal from scrutiny.

In the interim, the letter of 3 February explained, the Council had politically endorsed the final draft of the text on 1 December; the European Parliament had adopted the Regulation as part of a first-reading deal on 16 December; and the Council was to adopt it on 14 February. The letter did not make mention of the Committee's letter of 20 October, or acknowledge, or indeed explain, the fact that the Committee had not been consulted before political agreement was reached on 1 December.

Nor, in the interim, had a revised version of the document, with an Explanatory Memorandum, been deposited in Parliament. This meant that, by February 2011, the only document the Committee could report on was the Commission's original proposal—dated 11 March 2010 and deposited in Parliament on 17 March 2010. It was only after asking your officials that the final version of the text was deposited. The date of deposit was 14 February, the date the Regulation was finally adopted by the Council.

The Committee regards this series of omissions as deeply unsatisfactory. It demonstrates a worrying lack of awareness or understanding, or both, of the process of scrutiny of European documents on the part of your Department. Notwithstanding that your Department had lost trace of the Committee's letter of 20 October, the Cabinet Office guidance makes clear that it is "essential" that Departments keep the scrutiny committees fully informed of the passage of a proposal through the various stages of co-decision. The Committee's frustration is aggravated by the considerable importance of this proposal: the Commission's power to adopt implementing acts that legally bind Member States has far reaching consequences.

In view of the importance of this Regulation and of the failure to allow for its proper Parliamentary scrutiny, the Committee at its meeting of 16 February asked that you appear before it, rather than the Minister for Europe, to explain both your Department's approach to the scrutiny of this proposal and what you have done to ensure that such omissions do not happen again.

I therefore invite you to appear before the Committee and look forward to hearing from you shortly.
17 February 2011

EU - Australia Agreement (doc *6007/11)*

Letter from Theresa May to the Chair

I am writing to let you know the latest position on the EU-Australia PNR Agreement.
James Brokenshire will be writing to you separately on wider Polish presidency priorities for JHA issues.

The Justice and Home Affairs Council on 9th June did not take this as a discussion item, so the timetable for the Council Decision to sign the Agreement is now likely to be delayed. The UK was very clear that, under the Treaty, we should be allowed to exercise our option to allow Parliament to scrutinise the Agreement within our 3 month window for opting in, and I am glad that we now have the opportunity to enable this process to be completed properly.

I would also like to inform you that we have reached a collective Government position on the Agreement. Subject to scrutiny by your Committee, we would like to opt in to the decision to sign and decision to conclude on the basis that the EU-Australia PNR Agreement is in the best interests of the UK and will provide clear legal cover for carriers to transmit data according to the parameters of the Agreement. I understand that the Committee will consider the documents on 29 June and look forward to hearing from you in due course.

I will keep you informed of progress and update you further on the timetable to completion when we have further clarity on the matter.
21 JUN 2011

Joint Action renewing the mandate of the European Union Training Mission Somalia

Letter from David Lidington to the Chair

I am writing to let your Committee know of plans to renew the mandate of the existing European Union Training Mission Somalia. The current mandate will formally end when the second tranche of troops trained under the Mission returns to Mogadishu, likely to be in late August. The Mission has been successful in contributing to the development of the Somali security sector by strengthening the Somali security forces. It is an important part of the EU's comprehensive engagement in support of Somalia, with a view to responding to the priority needs of the
Somali people and stabilising Somalia to begin rebuilding security, and is consistent with the Union's external action as a whole, including the Union's development programmes.

My officials have raised the problem of national parliamentary scrutiny and asked if a decision might be postponed until after Recess. However, if a decision is delayed, there will not be sufficient time to carry out the necessary operational planning to avoid an operational gap should the Council decide that the Mission should be continued. This would result in unnecessary costs such as maintaining empty training facilities.

If a decision is adopted by Council in mid July, this will unfortunately mean that there is not enough time for your Committee to scrutinise the Decision. In light of the need to begin operational planning, I hope the Committee will accept the Crisis Management Concept for the extension of the mandate as sufficient basis for scrutiny.
06 July 2011

Letter from the Chair to David Lidington

The Committee has asked me to respond to your letter of 6 July about plans to renew the mandate of the existing European Union Training Mission Somalia.

You explained the timeline, and expressed that hope that, in order to avoid a breach of scrutiny, the Committee would accept the Crisis Management Concept for the extension of the mandate as a sufficient basis for scrutiny.

The Committee appreciates your endeavours to keep it informed of issues that are likely to jeopardize the scrutiny reserve. However, as has already been pointed out to FCO officials:

- the first sentence of the EM says: "This information is provided to the Committee in confidence as the document is classified Limité";
- this contravenes the arrangement agreed last year between the Committees and the Government on the treatment of Limité documents, which plainly says (in bold): "**They cannot be deposited** and subject to an Explanatory Memorandum as this makes their content public";
- the Committee therefore cannot deal with it;
- there would be little point in a further letter, since no other prior information can be used as a substitute for scrutiny of a document that is not yet able to be scrutinised;
- all the Committee can deal with is an EM covering a text, official or unofficial, that can be deposited without any caveat;
- if that is then deposited at a time when a scrutiny breach is unavoidable, that is how it has to be;
- if there are good reasons, as the FCO knows from experience, the Committee is always reasonable in its approach to such breaches.

So, in sum, the FCO has been advised to withdraw the EM and then arrange for the draft Council Decision to be deposited when it is ready, along with the usual EM. The Committee considers this the right course of action.
13 July 2011

DRAFT COUNCIL DECISION APPOINTING THE EUROPEAN UNION SPECIAL REPRESENTATIVE FOR THE SOUTH CAUCASUS AND THE CRISIS IN GEORGIA AND THE SUPPORTING BUDGETARY IMPACT STATEMENT

Letter from David Lidington to the Chair

I wrote to you in May setting out the proposal by the High Representative of the European Union for Foreign Affairs and Security Policy on the appointment of a European Union Special Representative for the South Caucasus. In my letter I undertook to write to you with details of the budget and to update you on any changes to the draft document previously submitted for scrutiny.

The budget was agreed at working level on 5 July. There have also been some additions to the text of the draft mandate since my Explanatory Memorandum on this matter which I have set out in this letter.

Applications for the role have been received and interviews are scheduled but have not yet taken place.

Amendments to the text of the Draft Council Decision
The most significant amendment has been the addition under Article 1: European Union Special Representative, of "and the crisis in Georgia" to the title of the role. This was felt to better encompass the nature of the job as the successor to the two former EUSR mandates.

With regards to Article 2: Policy Objectives, the policy objectives on which the mandate is based, reference has been included to the terms set out at the European Council meeting on 1 September 2008 and Council conclusions of 15 September 2008. The list of objectives also now includes a specific reference to using existing mechanisms, including the OSCE and its Minsk Group, to prevent conflict in the region.

Under Article 3: Mandate, other key political actors have been included in the contacts that the EUSR shall develop in the pursuit of his mandate; and emphasis has been laid on the *peaceful* settlement of conflicts *in*

accordance with international law. Under the Geneva International Discussion, reference has been included to the 8 September implementing measures. A more general point requiring the EUSR to assist the EU in further developing a comprehensive policy towards the South Caucasus has also been added to the mandate.

Under Article 4: Implementation of the mandate, formal reference has been removed to a handover with former EUSR for the Crisis in Georgia, Pierre Morel. Although this has been removed from the formal mandate, Ambassador Morel has agreed to accompany the new EUSR to the October Geneva Talks to ensure a smooth introduction to the parties and enable a handover to take place. Allowances have been made in the budget to cover Ambassador Morel's participation. Under Article 12: Coordination, a request has been added for the EUSR, in close coordination with the EU Head of Delegation in Georgia, to provide the Head of EUMM Georgia with local political guidance and for the EUSR and the Civilian Operations Commander to consult each other as required.

Budgetary Impact Statement

The proposed budget for the EUSR for the South Caucasus and the Crisis in Georgia is 1,758,000 Euro. This figure represents a 352,000 Euro saving on last year's budget when there were two EUSRs covering Georgia and the South Caucasus separately. This will be funded from within the CFSP budget, with no additional requests made to member states. The EUSR is expected to take on many of the former staff from the outgoing EUSRs formerly covering this region. The proposal allows the EUSR a team of six political advisors based in Brussels, and a further three resident in Tbilisi, Baku, and Yerevan respectively. All nine political advisors, two police liaison officers, a press officer, and a moderator will be seconded by member states or the EAS. Nine additional members of staff will be contracted, seven in Tbilisi and two in Brussels.

The EUSR shall be paid 20,000 Euro a month. Costs for other staff are set out in full in the attached budgetary impact statement. It is the intention that EUSR staff shall be accommodated within the EAS offices in the South Caucasus countries as such accommodation becomes available. Costs have been included to allow Pierre Morel to accompany the new EUSR to Tbilisi, Moscow, and Geneva for the October talks and hand over the dossier effectively. Overall I am content that the proposal is reasonable and that the EAS has provided adequate justification of the costs included.

The Committee has held the initial Explanatory Memorandum subject to receiving the additional information I have set out in my letter. Given the tight timescale I am aware that it may be difficult for me to respond to any further questions from the Committee before the 18 July Foreign Affairs Council. In light of the need to ensure the EU Special Representative takes up his position in sufficient time to prepare for the Geneva Talks in October I hope the Committee will understand if I agree to the Decision before receiving confirmation that scrutiny has been completed.
18 July 2011

Letter from the Chair to David Lidington

The Committee has asked me to thank you for your letter of 18 July, in which you outlined the state of play in securing agreement on a substantive mandate.

You outlined the changes to the May draft Council Decision - in particular, the inclusion of the Georgia conflict in the new mandate - and provided considerable information about the costs and staffing. However, you do not address your initial concern: as long ago as last September you said that, in ongoing discussion about what this role would cover and who would carry it out, you would seek to ensure whoever filled the position would have "sufficient seniority and experience to establish the level of access and influence necessary to have an impact on key players." The lack of information on this front is the main reason why the Committee has kept the
draft Council Decision under scrutiny. Notwithstanding all the other information now provided, for which it is of course grateful, the Committee would not feel it appropriate to clear the Council Decision when what you yourself saw as the key consideration is still to be determined. Looking ahead, the Committee looks forward to scrutinising the EM and draft Council Decision that will emerge in due course, and in the meantime asks only that it fully explains the background to and the approach finally agreed by the Council.
19 July 2011

Council Decision on appointing the European Union Special Representative in Kosovo

Letter from David Lidington to the Chair

You will recall that an Explanatory Memorandum was submitted for Parliamentary Scrutiny on 15 March for a full extension of the Kosovo EUSR mandate from 1 May 2011 until 30 April 2012. Your Committee considered the document on 23 March 2011 and decided to keep it under scrutiny (ESC 32590, 23rd Report, Session 2010/11). However, due to difficulties in obtaining full agreement from Member States at that stage, the proposal for a full extension was replaced by a proposal for a temporary extension of the mandate from 1 May 2011 to 31 July 2011, with the intention that the full substantive mandate should commence in August post negotiations. An Explanatory Memorandum was thus submitted for this temporary mandate which your Committee cleared as "politically important" on 11 May 2011 (ESC 32738, 28th Report, Session 2010-12).

We have since returned to negotiations on the substantive mandate, taking it from 1 August 2011 up to 30 June 2012. This proposed substantive mandate contains a number of improvements from the version you previously considered (something I raised as important for the Government in my EM of 5 May on the temporary mandate extension). Whilst negotiations are still continuing, I am pleased to say that at this point, my officials have secured improvements to the proposed substantive mandate, with the mandate now calling for:

Strengthening the EU presence in Kosovo.
Supporting Kosovo's progress towards the EU, in line with the European perspective of the region.
Monitoring, assisting and facilitating progress on political, economic and European prioritise to ensure a broader understanding and support from the Kosovan public on EU related issues.
Assisting in the implementation of the EU facilitated dialogue between Belgrade and Pristina.

The UK has also succeeded in removing statements calling for the EUSR to play a role in supporting a final status settlement for Kosovo, which we saw as prejudicial to those Member States who believe Kosovo has achieved its final status and to the EU's declared status neutral position.

In my EM, I expressed strong concerns about the inclusion of references to Kosovo being 'Under UN Security Council Resolution 1244', which we view, as prejudicial to the position of recognition taken by 22 Member States. You will recall that my officials had succeeded, in April this year, in requesting a review by the EAS and Presidency of these references. As a result of the review I accepted the inclusion of the prejudicial references on the condition that a Cover note was attached to the Council Decision as follows:

"The references to Kosovo in this Council Decision are without prejudice to the Member States' positions on its status, and without prejudice to the Member States' positions in the ongoing discussion on the EEAS paper "Kosovo - Review of References in EU documents".

The UK is still awaiting a completion of the review. We would therefore seek to protect the position we secured at the last Council Decision through requesting a cover note as above.

The Council has not yet circulated a financial reference amount for the proposed substantive mandate. The UK will however ensure that the budget is fully scrutinised in line with our commitment to value for money.

Despite broad agreement over the proposed substantive mandate, as a successful candidate has not yet been announced for the EUSR position, there is a possibility that the EAS may need to seek a short-term technical extension (2-3 months likely) of the current (temporary) mandate. Should this happen, it would need to occur during recess and I therefore regret that I may be required to override. I would note however, that if this does occur, it is my understanding that this would be on a 'no-additional cost' basis.
15 July 2011

Letter from the Chair to David Lidington

The Committee has asked me to thank you for your letter of 15 July, in which you outlined the state of play in securing agreement on a substantive mandate beyond 31 July 2011.

You outlined the improvements that you regard as having been secured to the March draft Council Decision and how the issue revolving around UNSCR 1244 has been addressed thus far. But, as you note, the review in question has yet to be completed; you are unable to provide any information about the budget for the new mandate; and the incumbent has yet to be proposed for Council approval. Indeed, you envisage the possibility of a further temporary mandate extension if agreement cannot be reached on a candidate before 31 July (you do not mention if Mr Gentile is one of those being considered). With the summer recess imminent, you note that in these circumstances you may need to over-ride scrutiny.

The Committee is grateful for this information, but would not feel it appropriate to clear the Council Decision with so many essential elements still to be determined. Looking ahead, the Committee looks forward to scrutinising the EM and draft Council Decision that will emerge in due course, and in the meantime asks only that it fully explains the background to and the approach finally agreed at the FAC.
19 July 2011

Budget for the extension of the mandate of the European Union Special Representative in Kosovo

Letter from David Lidington to the Chair

In my Explanatory Memorandum of 30 September I noted that the projected costs for the temporary extension to the mandate of the Kosovo EUSR were not yet available due to the late decision to extend the current mandate.

The budget for the four-month extension was published yesterday. The financial reference amount intended to cover the expenditure related to the mandate for the period from 1 October 2011 to 31 January 2012 is EUR 770 000. This figure is proportionate to previous mandate budgets.
17 October 2011

Council Implementing Decision *2011/137/CFSP* and Council Implementing Regulation (EU) No. *803/2011* of 10 August extending an asset freeze to two further entities closely linked to the perpetrators of the serious human rights abuses in Libya.

Letter from David Lidington to the Chair

I am writing with regard to Council Implementing Decision 2011/137/CFSP and Council Implementing Regulation (EU) No. *803/2011* which were agreed by written procedure on 10 August. These measures extend the EU asset freeze measures to AI-Sharara Oil Services Company and the Organisation for Development of Administrative Centres (ODAC). Both entities are known to be acting on behalf of or at the direction of the illegitimate Qadhafi
Regime. The official documents, as they appear in the EU Official Journal, are attached (Annex A and 8). As these additions are minor changes to existing restrictive measures. I do not believe that they need to be formally deposited and scrutinised.

In total, six port authorities, 49 entities and 39 persons involved in the serious human rights abuses in Libya are now subject to a freeze of their funds and financial resources in the European Union. In addition, the same 39 persons, which include Muammar Qadhafi and several family members are banned from entering the EU.

Our focus at the moment is on refining, Implementing and reviewing the Libya sanctions regime to ensure it achieves the policy objectives as effectively as possible. We know that Libya is experienced at dodging sanctions as UN sanctions were first imposed in the early 1990s. While measures were suspended in 1999 and

removed in 2003 - seen as a result of Libya doing what the Security Council had demanded - Qadhafi is experienced at working around sanctions.

Therefore we need to continue to ensure that the current sanctions package is fit for purpose in terms of contributing to delivering our current policy objectives, adjusting it where necessary to ensure maximum impact and to respond to the illegitimate Qadhafi-regime's attempt to find new ways around it. Listing these two entities will help us maintain pressure on Qadhafi and strengthen the sanctions regime we have in place.
12 August 2011

EU EXTERNAL REPRESENTATION

Letter from David Lidington to the Chair

I am writing to inform you that the 22 October General Affairs Council approved an agreement on General Arrangements for EU statements in international organisations.

As the Government set out clearly in yesterday's debate on the floor of the House, we believe EU external action should allow the member states of the EU to make best use of their collective weight in the world in those areas where we agree to act together. Action by the EAS and EU delegations should supplement and complement, and not replace, national diplomacy.

The EU Treaties clearly outline the extent of the powers conferred upon the EU by the Member States to act. Powers not conferred upon the EU remain with the Member States. But there are some within EU institutions and amongst member states who take a more expansive view of the rights and responsibilities of the EU to act on our behalf internationally.

We remain very clear that the E'U must fully respect the division of competence between the EU and Member States. In recent months we have worked to obtain clarity on the balance of responsibilities between the EU and the Member States, in the form of arrangements for EU statements. The result of the tough line we have taken on this issue is that the 22 October General Affairs Council agreed arrangements for statements and other aspect of representation for the EU in international organisations which spell out clearly that, as we have always maintained, representation does not affect competence.

The General Arrangements are clear that "the EU can only make a statement in those cases where it is competent and there is a position which has been agreed in accordance with the relevant Treaty provisions". They further state that "Member States agree on a case by case basis whether and how to coordinate and be represented externally". The new arrangements allow for statements to be made "on behalf of the EU" in areas that refer exclusively to actions undertaken by or responsibilities of the EU. If statements express a position common to the EU and its Member States, then that will be reflected in the way the statement is introduced. The preparation of statements will be "consensual".

The Government made a Statement for the Minutes of the Council to clarify that "Member States, including the UK, will continue to exercise their rights in International organisations, including by making national statements, participating in statements with other states, or representing EU positions".

I have today deposited copies of the General Arrangements and the text of the UK Statement for the Minutes of the General Affairs Council in the Library of the House. Copies will be available in the Vote Office and the Printed Paper office. The Formal Minutes will be finalised in the coming weeks, and we will deposit copies in the Library.
25 October *2011*

Letter from the Chair to David Lidington

Thank you for your letter of 25 October, enclosing the *General Agreements for EU statements in multilateral organisations* adopted at the General Affairs Council on 22 October and the UK's statement in this regard for the Council minutes.

We thought the document both legally and politically important: it goes some way to clarifying institutional prerogatives and boundaries within the EU in an area which has been particularly sensitive for Member States. The reminder of the principle of conferral of competence, and of the distinction between competence and representation, are important and we were pleased to see that these had been incorporated into the document. We also welcome the fact that the document clarifies that representation will be agreed on a case-by-case basis; such flexibility is important in our view, and consistent with the often changing nature of multilateral organisations.

Given our view on the importance of the document, we would be grateful if you could deposit it in Parliament, in accordance with paragraph (1) (vi) of the Committee's Standing Order, so that it can be reported more widely to the House.

We also ask you to clarify what is meant by the following practical guideline:

"Should the statement express a position common to the European Union and its Member States pursuant to the principle of unity of representation, it will be prefaced by 'on behalf some of the EU and its Member States'".

Even were a preposition to have been inserted, it is not entirely clear what "some [of?] the EU" would mean; or is this just a case of unhappy drafting?

I look forward to hearing from you.
9 November 2011

THE APPLICATION OF THE JUSTICE AND HOME AFFAIRS OPT-IN TO INTERNATIONAL AGREEMENTS

Letter from David Lidington to the Chair

Further to my letter of 19 July 2011; your letter of 12 October 2011 and the joint letter from the Home Office and Ministry of Justice of 3 November. I am writing to set out the Government's position on the justice and home affairs (JHA) opt-in in relation to international agreements to coincide with the publication of the Government's final response to your Committee's report "Opting into international agreements and enhanced Parliamentary scrutiny of opt-in decisions".

I understand your concerns about the Government's assertion that the JHA opt-in Protocol is engaged by JHA content rather than just by the citation of a Title V legal base in a measure. I gave evidence to your Committee on the reasons for the Government's position in April. As you know, I attach huge importance to effective Parliamentary scrutiny of this Government's actions in the EU. For this reason, following the publication of your report in May, I have held discussions with Ministerial colleagues and asked officials to review the Government's position on this issue. Unfortunately, the Government and your Committee have come to two different conclusions on this important point. In the Government's view, as set out in the Home Secretary and Justice Secretary's joint letter of 3 November, a JHA obligation in a measure should never be regarded as ancillary for the purpose of the predominant purpose test and will always justify the citation of a JHA legal base. In such circumstances we consider that the UK is not bound by a measure which creates JHA obligations unless we have opted in pursuant to the Protocol. We consider this is the case irrespective of whether a JHA legal base has been cited. We will therefore lobby for such a legal base to be cited in all relevant Council Decisions. On this basis, if we are unsuccessful in arguing that a JHA legal base should be cited in a Council Decision, we would nonetheless assert that the opt-in applies where an international agreement creates obligations in the JHA field.

I would reiterate that the scrutiny process remains of great importance to the Government. We will make every effort to ensure that your Committee and the Lords EU Select Committee have the opportunity to express views on EU proposals. However, given our continuing disagreement over the circumstances in which the JHA opt-in applies to international agreements, the Government is left with no option but to override a scrutiny block imposed by your Committee on international agreements where we assert that the JHA opt-in applies. This is of course not something we do lightly. But the conclusion of these agreements is an important element in the Government's key European policy objective of promoting economic growth and employment through stronger trade relations between the EU and its Member States and third countries.

With regret, I am therefore overriding the current scrutiny blocks on the proposals for Council Decisions on signature by the EU of the agreements with Iraq (16152/10 (32176),16179/10 (32177) & SN 4953/1/10 REV.1 (32638)), Vietnam (18041/10 (32369, 14R, 10-12)), the Philippines (13615/10 (31949 & OTNYR (32472))) and Mongolia (7853/11 (32608)). It is my intention to do so again with regards to any future proposal for a Council Decision on signature or conclusion of an international agreement by the EU where the Committee withholds scrutiny clearance on this point alone. It is important that the UK is able to use its vote to support international agreements of this kind which contribute to UK prosperity.

I would like to apologise for the delay in publishing the Government's response to your report, which is now attached.

On the issue of "Delegated implementing acts" I beg your indulgence for a while longer. I will ensure you receive a response as soon as possible.
10 November 2011

INTERPRETATION OF THE JHA OPT-IN PROTOCOL

Letter from Theresa May to the Chair

I am writing on behalf of the Justice Secretary and myself to set out the Government's approach to the interpretation of the JHA Opt-in Protocol specifically, in what circumstances we consider that the opt-in is available.

This complex issue has been the subject of considerable Parliamentary interest, as has been demonstrated through correspondence with, and appearances in front of, your Committee.

In answer to some of your letters and questions we said that we were reviewing the UK approach in this area. This review has now been completed, and I am therefore writing to explain our position.

We believe it is vital for UK interests that the Opt-in Protocol is applied in a consistent manner. In the majority of proposals presented by the Commission and eventually adopted by the Council and European Parliament the availability of the opt-in is clear. However, there have been a number of cases in recent months of measures which include JHA content, but not as their primary purpose. This content has varied from provisions imposing legally binding obligations to provisions reflecting political commitments or containing declaratory statements. Where these provisions are part of a larger measure which concerns non JHA matters, and the JHA provisions can be regarded as ancillary, the position of the Commission is generally that a JHA legal base need not be cited due to the "predominant purpose test"; this is the general rule that a measure need only cite the legal base which corresponds to the "predominant purpose" of the measure in question.

In our view, however, content which imposes JHA obligations is different because of the need to ensure that the right of the UK and Ireland to decide whether or not to opt in is respected as set out in our Protocol, which has equal status to the Treaty. On this basis our view is that a JHA obligation in a measure should never be regarded as ancillary for the purpose of the predominant purpose test and will always justify the citation of a JHA legal base. It is clear that in such circumstances we consider that the UK is not bound by a measure which creates JHA obligations unless we have opted in pursuant to the Protocol. Furthermore, we consider that this is the case *irrespective* of whether a JHA legal base has been cited. On this basis, if we are unsuccessful in arguing that a JHA legal base should be cited in a measure we would nonetheless assert that the opt-in applies where the measure creates obligations in the JHA field.

Conversely, we do not consider that the opt-in is available, nor would we press for the insertion of a JHA legal base, if a proposed measure contains political commitments or declaratory statements which impose no JHA obligations.

We have also reviewed the UK position on the issue of exclusive external competence, and have decided to depart from the policy we inherited from the previous Government. We consider that the opt-in does apply to *al/* measures containing JHA obligations, even where the EU has exclusive external competence in relation to those obligations based on the adoption of internal JHA rules that bind the UK. This means that if an internal EU rule, to which the UK previously opted in, was subsequently extended to a third country we would consider that the opt-in applies to the extension of that measure and would reserve the right to decide whether or not to participate in the new agreement, even if the EU was exercising exclusive external competence.

We are aware that the Parliamentary Committees have argued that the opt-in is only available if a JHA legal base has been cited. Despite this, we believe that the approach I have outlined best protects the interests of the UK in seeking to retain the widest possible freedom of choice in relation to EU measures containing JHA obligations. We also believe that it reflects the wording and purpose of the JHA Opt-in Protocol, which makes clear that if a measure is "pursuant" to Title V then the opt-in is available and the UK can choose whether or not to participate.
I hope you are satisfied with this explanation of our policy, but I would of course be very happy to answer any further questions you might have on this matter.

In the meantime I would like to take this opportunity to assure you that we will continue to work with the EU Institutions to increase understanding of the operation of the JHA Opt-in Protocol and acceptance of the UK's position on this matter.

Finally, I would like to thank you and your fellow Committee Members for your detailed consideration of EU JHA affairs. While we will not always agree, you play a crucial role in helping us explore some of these very complex and important issues.
03 NOV 2011

Letter from the Chair to David Lidington

Thank you for your letter of 10 November enclosing the Government's formal response to the Committee's Report, "*Opting into international agreements and enhanced Parliamentary scrutiny of opt-in decisions*" which was published on 18 May. This follows on from the Home Secretary's letter of 3 November, which was also sent on behalf of the Justice Secretary, setting out the Government's approach to the interpretation of the UK's JHA (Title V) opt-in Protocol.

The Committee notes that you have held discussions with Ministerial colleagues and asked officials to conduct a review of the Government's opt-in policy in light of the concerns expressed in our Report and raised during the course of scrutiny. Regrettably, the outcome of that review differs from the Committee's view that a Title V legal base must be cited in order to engage the UK's opt-in Protocol.

Given this difference of opinion, you inform us that the Government is left with no option but to override scrutiny in circumstances where the Committee questions the Government's assertion that the UK's Title V opt-in Protocol applies. Accordingly, you say that the Government is overriding scrutiny on draft Council Decisions providing for signature by the EU of agreements with Iraq, Vietnam, the Philippines and Mongolia and will continue to do so in future if the Committee maintains its scrutiny reserve on draft Council Decisions on the signature and conclusion of international agreements because of its concerns regarding the application of the UK's Title V opt-in.

We do not endorse the course of action that you have taken and remind you that the scrutiny reserve remains on the aforementioned Council Decisions, notwithstanding your decision to override it.

The Committee agreed at today's meeting to publish the Government's formal response and related correspondence. Following publication, we will consider how we wish to respond to the key points made by the Government.
24 November 2011

Biological and Toxin Weapons Convention Seventh Review Conference, Geneva, 5-22 December 2011

Letter from Alistair Burt to the Chair

This December sees the Seventh Review Conference of the Biological and Toxin Weapons Convention (BTWC) in Geneva. The Review Conference will set the agenda and tone for the BTWC for the next five years.

Following clearance by the Committee of the EU Council Decision on a Common Position regarding the Review Conference, I know that the BTWC is an issue in which Parliament take a close interest. So do I, and I will be making a statement on behalf of the UK at the first day of the RevCon.

As one of the three Depositaries of the Convention (the others are US and Russia), the UK has a special responsibility towards upholding the good functioning of the BTWC. The FCO therefore commissioned the University of Sussex to update a reference guide, "The Seventh BWC Review Conference Briefing Book". This brings together official documents and other texts relating to the biological weapons regime. We will provide copies to all States Parties but hope the book will be of particular benefit to lesser resourced delegates to the Review Conference, enabling them to contribute better to the meeting. It gives me great pleasure to enclose a copy for your Committee.

I look forward to reporting to the Committees in January next year on bow we delivered against our objectives, as well as the UK's individual and the EU's collective contributions to what we all hope will be a successful outcome.
14 November 2011

Letter from the Chair to Alistair Burt

You wrote to the Committee on 14 November about "The Seventh BWC Review Conference Briefing Book", which you said that the UK had prepared for the benefit of all States Parties but especially for the lesser resourced delegates to the Review Conference, enabling them to contribute better to the meeting. You also enclosed a copy for the Committee. You concluded by looking forward to reporting to the Committee in January next year on "how we delivered against our objectives, as well as the UK's individual and the EU's collective contributions to what we all hope will be a successful outcome."

The Committee has asked me thank you for your thoughtfulness in sending it a copy of the guide, and to say that it looks forward to hearing from you further in the New Year.
7 December 2011

Euro Summit Statement of 26 October

Letter from David Lidington to the Chair

Thank you for your letter of 3 November regarding the Euro Summit Statement of 26 October. A strong and stable euro area is in the UK's national interest because of our close economic links. And resolution of the eurozone debt crisis would play a key part in boosting confidence in the British *economy.* We are therefore actively encouraging countries in the eurozone collectively to sort out their ongoing problems.

We are monitoring *very* closely how greater fiscal integration in the eurozone might impact other aspects of the EU, including the Single Markel The *Government* is *very* clear that we need to ensure that decisions which should rightly be made by all 27 members will continue to be made by all 27. This is a view shared by other Member States.

On 21 July the eurozone leaders asked Herman Van Rompuy to develop a range of economic governance measures to help solve the crisis. It is on this basis, that the idea for regular eurozone summits emerged. As part of the consultation process, the Government set out its view at a number of meetings with Mr Van Rompuy as well as with our EU partners. Van Rompuy set out his prospective findings at the European Council on 23 October and the unanimous view of the Council was reflected in the resulting Conclusions. The Prime Minister reported this to the House in his statement, as did the Chancellor following the informal European Council on 26 October.

With regard to whether the establishment of the eurozone summits would require a Treaty basis, and therefore a Treaty change, the answer to both is no. In itself, this form of euro summit does not require a Treaty base since EU leaders are able to meet in a range of formats. This is not without precedent, as eurozone finance ministers have been meeting regularly for some time.

You asked about the process for non-eurozone members contributing to Mr Van Rumpus's interim report for the December European Council on proposals to achieve closer fiscal integration, which will be followed by a final report in March or June 2012. Ahead of the publication of the Interim report, the UK and other Member States have been discussing the issues with Mr Van Rompuy and his Cabinet. Our position is that eurozone countries need to accept the remorseless logic of monetary union that leads from a single currency to greater fiscal integration. The UK accepts
the need for greater fiscal integration in the eurozone while ensuring we are not part of it and that our national interests are protected. However, decisions which concern the EU at 27 must still be taken at the level of all 27 Member States, including the single market, the budget and financial services. We would look carefully at *any* proposals for Treaty change on their merits if they are put forward and in light of the opportunity it may provide to advance our national interests. Under the EU Act 2011, *any* further Treaty change of *any* type would require as a minimum the approval of Parliament through a Bill.

I understand your concern about keeping the European Scrutiny Committee in touch with developments. Once the way ahead on the Van Rompuy report is clearer, I would be happy to give evidence to your committee if that would be helpful.
01 December 2011

Letter from the Chair to David Lidington

Thank you for your letter of 1 December, and for the helpful information it contained.

We were surprised, however, that your reply on the question of a Treaty basis for the Euro Summit was so categorical. The Euro Summit is likely to become an influential eurozone institution. Its action may also have an effect on non-eurozone Member States. As such, we think that its competences ought to be agreed to by all EU Member States through a revision of the EU Treaties. Given that a revision of the Treaties was not agreed in the European Council last week, we would be grateful if you could inform us in due course whether the proposed international agreement will prescribe the role of the Euro Summit.

Your answers on the Government's approach to the European Council meeting of last week have now of course been overtaken by events. There is some confusion, however, as to exactly what safeguards the UK asked for in the European Council, and in what form. For example, the Prime Minister in his statement to the House on Monday said the UK was not asking for an opt-out; on Tuesday the President of the Commission in his speech to the European Parliament today said the UK asked for a specific protocol on financial services.

We would be grateful if you could clear up this confusion (on our part at least) by explaining exactly what safeguards the UK asked for as a pre-condition to revision of the EU Treaties, and by providing us with a copy of any documentation which sets out these safeguards. (We note that the BBC has referred to the existence of such a document, and an unauthenticated document entitled "Annex: Financial Services – Explanatory Note" is circulating the internet). It is vital that we receive this information to enable us to understand fully the nature of the negotiations in the European Council last Thursday and Friday.

Finally, following recent events in the eurozone we have decided to take evidence in public in the New Year from a number of sources on the resolution of the eurozone crisis and the possible consequences for the UK. We will examine what we see as the crux of the problem, that is, how to reconcile the necessary monetary and fiscal policies, based initially on the statement of 9 December by the Euro Heads of State or Government, with the legal and institutional constraints.

Clearly, the Government's position on the monetary and fiscal possibilities within the confines of an international agreement will be central to our inquiry. Whilst we are very grateful to you for offering to give evidence to the Committee on these developments, given the importance of the issues we will be inviting the Foreign Secretary to give evidence to this inquiry.
14 December 2011

The operation of Article 10(4) of the Protocol on Transitional Provisions Protocol 36 of the Treaty of Lisbon

Letter from Theresa May to the Chair

I am pleased to provide at annex A the list of measures that the Government considers to be subject to this notification. The Transitional Protocol to the Lisbon Treaty allows the UK to "opt out" by 1 June 2014 of "acts of the Union in the field of police cooperation and judicial cooperation in criminal matters which have been adopted before the entry into force of Lisbon". This means that all "acts" with a legal base in the former Title VI of the Treaty of the European Union (police and judicial cooperation in criminal matters) are caught by this transitional provision. This includes straightforward Third Pillar' measures as well as 'Third Pillar' measures classified as 'Schengen building'.

The list at annex A is split between old 'Third Pillar' measures and 'Schengen' measures due to the slightly different procedures that would apply to any application to rejoin measures should the decision be taken to reject European Court of Justice jurisdiction resulting in the UK opting out of all measures within the scope of the decision. In respect of measures forming part of the Schengen acquis, this would be governed by the Schengen Protocol. The UK would need to make an application under Article 4 of that Protocol and the Council would decide on the request "with the
unanimity of its members" and the representative of the UK. For non-Schengen measures, Article 4 of the Title V Protocol would apply, which is the process for opting in to a measure post adoption and allows for conditions to be set by the Commission.

Also included as part of the annex is a list of measures which the UK has opted in to which repeal and replace, or amend, measures which would otherwise have been within the scope of the notification.

The lists are subject to change as measures are repealed and replaced or amended and we will keep you updated with any changes that are made. In particular I am aware that the Commission is planning proposals for next year involving revisions to Europol, Cepol (EU police college), Eurojust, the framework for cooperation on confiscation of assets and on criminal measures to tackle counterfeiting the Euro, all of which fall on the current list. Those proposals will of course trigger separate opt-in decisions. We will continue to engage with the Council Secretariat to ensure that the list is comprehensive.

I am committed to ensuring that Parliament is able to properly scrutinise the decision that flows from Article 10(4) of Protocol 36 of the Treaty of Lisbon as part of our undertaking to hold a debate and vote in both Houses on this decision. We look forward to engaging with Parliament fully in this matter.
21DEC 2011

Link to Annex A

Council document amending Council Decision 2010/639/CFSP concerning restrictive measures against Belarus

Letter from David Lidington to the Chair

I am writing with regard to a Council Decision concerning restrictive measures against Belarus. I regret that due to the pace of events in the EU I find myself in the position of having to agree to the adoption of this document before your Committee has been able to provide parliamentary scrutiny.

Since the measures were renewed in October 2011 we have been negotiating with EU partners to expand the listing criteria so that it is not explicitly tied into events that took place around the elections of December 2010. The purpose of broadening the criteria is to ensure that the targeted measures remain relevant to the current situation on the ground in Belarus. In this respect the listing criteria will be amended to include ·serious violations of human rights or the repression of civil society and democratic opposition· and ·persons or entities benefitting from or supporting the regime·. The agreement of all Member States to expand the criteria was secured on 12 January.

There is a Foreign Affairs Council on 23 January and Belarus is on the agenda. The aim is to make an announcement that the criteria under which individuals or entities can be targeted is being extended. In order to be able to achieve this aim, unfortunately on this occasion it has been necessary for me to override parliamentary scrutiny.
16 January 2012

Letter from the Chair to David Lidington

The Committee has asked me to respond your letter of 16 January in which you alerted it to a prospective scrutiny override concerning a Council Decision that is to be adopted at the 23 January Foreign Affairs Council, amending Council Decision 2010/639/CFSP concerning restrictive measures against Belarus.

The Committee is, of course, familiar with the continuing repressive, anti-democratic actions of the Lukashenko regime. They noted that, a month ago, the High Representative and the Enlargement Commissioner jointly issued a statement:

- recalling the anniversary of the start of the brutal crackdown by the Belarus Government on civil society, political opposition and independent media;
- noting that over the subsequent 12 months, the Belarusian authorities have imprisoned peaceful demonstrators, suppressed non-violent protests, and worked to silence independent voices;
- citing credible reports of degrading and inhumane treatment of political prisoners, some of whom have been set free, but not others;
- calling for such other political prisoners to be immediately released and rehabilitated, including presidential candidates Andrei Sannikau and Mikalai Statkevich and human rights defender Ales Byalyatski;
- expressing grave concern over new laws that will further restrict citizens' fundamental freedoms of assembly, association and expression and that target support to civil society;
- reiterating that the improvement of bilateral relations with the United States and the European Union is conditional on progress by the Government of Belarus towards the fulfilment of its OSCE commitments and respect for fundamental human rights, the rule of law and democratic principles; and that the United States and the European Union remain willing to assist Belarus as it works to meet these obligations.

The rationale behind the proposed changes would thus seem well-founded. Though they will no doubt come as no surprise to the ever-defiant Lukashenko, they will also, one hopes, fortify democratic forces. They are also consistent with a long-established and well-founded EU (and US) position. The Committee is therefore not inclined, at this stage at least, to take issue with the prospective override. They would, however, ask you to deposit an Explanatory Memorandum immediately after the adoption of the Decision, to include an explanation as to why — given that the Ashton/Füle statement was made in mid-December — it was so late in the day that agreement was reached on what would appear to have been a straightforward expression of the

widely-held views in that statement (the Committee's assumption being that this was not the result of dilatoriness or lack of respect for the scrutiny process).

18 January 2012

Letter from David Lidington to the Chair

In line with our commitment to proper scrutiny of EU business, the Government is committed to keeping Parliament informed on issues relating to each EU Presidency programme.

I attach a summary and analysis of the Danish EU Presidency priorities, as well as a copy of a strategic framework, a timeline of key events and information on key Danish personnel for the Presidency. I have also placed a copy of the summary and strategic framework in the library of the House, in the interest of informing all members. I very much look forward to hearing your views and engaging with you on these issues.

You will note our analysis of the high degree of convergence between the UK's EU priorities, and those of the Danish Presidency. Nevertheless, we will seek to encourage the Presidency to emphasise the need for policies promoting growth, in line with the UK's strong ambitions for the EU in this area.

3 February 2012

Letter from David Lidington to the Chair

Negotiating mandate for the Cooperation Agreement on Partnership and Development between the EU, its Member States and Afghanistan

I am writing to inform your Committee that the November Foreign Affairs Council approved a negotiating mandate for a Cooperation Agreement on Partnership and Development (CAPD) between the EU, its Member States and Afghanistan. While the negotiating mandate stage of such an agreement does not require parliamentary scrutiny, I would nonetheless like to ensure that your Committee is informed of current policy and status of negotiations, and to set out the expected next steps.

The EU Foreign Affairs Council in July last year instructed the EEAS and Commission to draw up a negotiating mandate for an EU-Afghanistan long term partnership agreement. The UK strongly supported this approach. We believe the EU should have a lead role on civilian development in Afghanistan beyond 2014 and a long term partnership agreement would create a strong institutional framework to facilitate this, focus EU resources, help deliver UK objectives and help secure other Member States commitment to Afghanistan beyond 2014. The negotiating mandate for the CAPD was approved at the November FAC.

The negotiating mandate sets out the scope and extent of the EU's support to Afghanistan beyond the military drawdown in 2014. It covers a range of areas which are important to UK interests in Afghanistan and which draw on expertise in the EU and Member States. These include political and development cooperation, trade and investment, human rights and the rule of law sector.

The negotiating mandate envisages that the agreement will be a mixed agreement involving both EU and Member State competence and will, when negotiated, require signature by the EU and the Member States. The proposed mandate envisages that the agreement will address matters falling under Title V of the Treaty on the Functioning of the European Union (TFEU), concerning justice and home affairs, to which the UK opt-in applies. In line with our consistent practice in relation to negotiating mandates for Partnership and Cooperation Agreements, the UK will not opt-in at this stage but have secured language in the mandate which takes account of the special position of the UK and Ireland under Title V of the TFEU. This provides cover for the UK to determine whether to opt-in to the agreement once it is negotiated and when the Commission brings forward the proposals for the signature and conclusion of the agreement.

The negotiating mandate sets the parameters for detailed negotiations on the substance of the CAPD which will begin early this year. We are yet to receive the indicative timetable for negotiations. However, we believe it likely that negotiations will last approximately two years with the aim of concluding before the end of 2014. The Council Decisions to sign and conclude will, of course, require parliamentary scrutiny. When we reach this stage in the process we will provide you with all necessary information in good time. In the meantime I am happy to answer any further questions you might have, based on the information currently available.

2 February 2012

Letter from the Chair to David Lidington

EU-ZIMBABWE: FURTHER RESTRICTIVE MEASURES

The Committee has asked me to respond to your letter of 2 February 2012 in which you wrote to explain that that EU Council Decisions concerning the "Restrictive" and "Appropriate" measures against Zimbabwe are due to expire concurrently on 20 February and that negotiations have therefore commenced on their rollover.

You say that whilst the Government should think strategically about how best to support the SADC-led reform process, you "should continue to predicate any move on the Measures upon progress on the ground"; that the growing proximity to elections will make discussions more difficult; and that differences in approach between Member States are likely to mean that negotiations will continue until the last minute. Specifically, you anticipate that the draft text on the Restrictive Measures may not be agreed until the end of January, and adoption of the Council Decisions will likely take place in the Council meeting of 15 February; and for the Appropriate Measures, that the draft will not be agreed until early February and that this will also be adopted at the 15 February meeting. You go on to note that the constituency recess means that the Committee will not meet on 15 February, and that you are therefore likely to need to over-ride scrutiny.

There are two points that the Committee would like you to clarify. Firstly, you say, in a letter dated 2 February, that "the draft text on the Restrictive Measures may not be agreed until the end of January". Second, a document 5820/12, entitled "Proposal for a Council Decision on adapting and extending the period of application of the appropriate measures first established by Decision 2002/148/EC concluding consultations with Zimbabwe under Article 96 of the ACP-EC Partnership Agreement", was deposited on 31 January. This suggests that, at least as far as the latter is concerned, an EM could have been submitted in time for our meeting today; and even that it might not have been too late to have submitted the draft text on the Restrictive Measures for scrutiny also.

The Committee would accordingly be grateful if you would explain these apparent inconsistencies in your Explanatory Memorandum, and let it know precisely when each draft text was agreed, and also provide a full read-out on the negotiating process.

8 February 2012

Letter from the Chair to David Lidington

EU-AFGHANISTAN COOPERATION AGREEMENT ON PARTNERSHIP AND DEVELOPMENT (CAPD)

The Committee has asked me to respond to your letter of 2 February 2012 concerning the negotiating mandate for a Cooperation Agreement on Partnership and Development (CAPD) between the EU, its Member States and Afghanistan.

You note that the Council Decisions to sign and conclude the CAPD will, of course, require parliamentary scrutiny, at which point you will provide an EM "with all necessary information in good time". The Committee looks forward to receiving it, and in the meantime wishes to thank you for your consideration in alerting it to the scope of the agreement and other related considerations.

8 February 2012

Letter from the Chair to David Lidington

Arrangements concerning Article 8 of the Treaty on Stability, Coordination and Governance

I am writing with respect to the above arrangements, which I attach to this letter.

For the purposes of our current inquiry, we will have to report on the legal status of this minuted annex, about which we were unaware at the time of our evidence session with you on 23 February. We are particularly interested to know a) whether this annex should be given the same legal status as the treaty to which it refers, and b) whether it creates legal obligations for the Contracting States.

In evidence on Article 8 of the treaty, the Government's position was said to be that Article 8 did not create legal obligations for Member States (question 153 of the transcript) because "will" rather than "shall" was used. But we note that these arrangements, despite the use of "will", purport to lay down binding obligations for the Trio States, referring to the effect of Article 8 as a "*duty* to bring the matter to the Court of Justice".

We would be grateful for the Government's replies to these questions.

In addition, we would like to know whether the Government foresees any obstacles to the operation of these arrangements or, conversely, sees them as plausible and practicable.

We intend to publish our report in the week beginning 26 March, so we ask that you reply to this letter by Wednesday of next week at the latest.

15 March 2012

Letter from David Lidington to the Chair

EU CENTRAL ASIA STRATEGY

I promised in my Explanatory Memorandum of 22 June about the renewal of the mandate for the EU Special Representative for Central Asia to write to the Committees about the EU Strategy for Central Asia which is due for review during 2012. We are still at an early stage of the review process, but you may welcome a general orientation at this stage on the current UK and EU approach to Central Asia, and on the areas covered by the 2007 -12 EU Strategy for Central Asia. I will write again as the review process becomes clearer.

Central Asia is a region of strategic importance to the UK and the EU. **The UK's main interests in Central Asia broadly fall under three strands: energy/commerce; regional stability; and governance. The first two relate directly to the Government's foreign policy priorities on prosperity and national security, and the third to the Government's commitment to a foreign policy that has the practical promotion of human rights at its core**:

- Energy/commerce: Kazakhstan and Turkmenistan have the potential to become significant suppliers of energy to European markets. The development of a Southern Corridor, bringing oil and gas from the Caspian region via Turkey to the EU, is a key objective for the EU. As they grow richer, Kazakhstan, Turkmenistan and, to a lesser extent, Uzbekistan hold considerable commercial potential. UK companies, particularly in the oil and gas sector, enjoy a high profile in the region.

- Regional stability: the region is important to Allied efforts in Afghanistan and in combating international terrorism and narcotics. The upheaval in Kyrgyzstan during 2010, and the unrest in Zhanaozen in western Kazakhstan in December 2011, provided stark indicators of how quickly events can change in the region. Disagreements over water resources, a vulnerability to religious extremism and inter-ethnic tensions all pose a risk to stability. An unstable Central Asia is not in our interest.

- Governance: there are serious deficiencies in the region, and more progress is needed on human rights reform.

The EU Strategy for Central Asia, adopted in 2007, serves as the general framework for enhancing EU co-operation with the Central Asian states over a 5 to 10 year period. It is not a legislative document. It sits alongside the European Commission's 2007-2013 Assistance Strategy for Central Asia, which provides the resources to support the strengthening of political dialogue with the Central Asian states.

The Strategy calls for the development and consolidation in Central Asia of stable, just and open societies that adhere to international norms. It identifies good governance, the rule of law, human rights, democratisation, education and training, and regional security and energy issues as key areas for co-operation. In particular, the Strategy establishes a regular regional political dialogue at Foreign Minister level; a regular Human Rights Dialogue with each of the Central Asia states; and Education and Rule of Law Initiatives. **The Strategy's work streams, on which more detail follows below, are consistent with the UK's objectives in and for the region**.

Progress on implementing the Strategy – driven by the EU Special Representative for Central Asia, Pierre Morel – has been steady.

Work continues on the **Rule of Law Initiative**, which aims to promote legal and administrative reform and thereby safeguard both economic interests and human rights and fundamental freedoms. This is being achieved through the provision of technical training and the exchange of international expertise, including facilitating contacts with the Council of Europe's legal experts on the Venice Commission and seconding international experts to work directly with their Central Asian counterparts.

The **Educational Initiative** sets up a coordination mechanism among EU donors to support the further modernisation of the education and vocational training sectors in Central Asia. This cooperation was making progress in the context of the education initiative and there had been a significant increase in resources for mobility programmes and an increasing engagement in the area of vocational training.

Human rights dialogues continue to take place with all five Central Asian countries. Our objective is to make these more results oriented.

The EU also continues to raise human rights issues in Cooperation Council and Committee meetings with the countries of the region, as well as in meetings in other formats where Partnership and Cooperation Agreements are not in place.

The Strategy highlights the importance to regional and global **energy security** of further diversification of export routes, demand and supply structures and energy sources. The INOGATE (Interstate Oil & Gas Transport to Europe) programme remains a key vehicle for EU work in this area, including an intensified dialogue under the November 2004 Baku Initiative on energy co-operation between the EU and the Littoral States of the Black and Caspian Seas and their neighbouring countries.

The Strategy notes the critical importance of an integrated **water management policy in Central Asia**. Cooperation is intensifying and all the Central Asian Countries have now agreed to engage on National Water Policy Dialogues (to improve domestic water management) in the framework of the EU Water Initiative.

Our attention has now turned to work on refreshing the Strategy, and the discussion on this has just started. The current proposed timetable is:-

March-April - discussion with Central Asian National Co-ordinators in Brussels;
April-May – Internal EU drafting process;
A subsequent European Council adopts revised EU Central Asia strategy.

We will look to work with our partners on ways to achieve greater impact from the Strategy and a clearer focus on the areas where it can produce most benefit for the region's people and for UK/EU interests. One important area to consider will be the need for a greater focus on security issues, given the significance of the ISAF drawdown and political transition process in Afghanistan over coming years.

As we take work forward, we will ensure that **the competence boundaries between the EU and its Member States are properly respected**. I will write to the Committee again as this process evolves.
2 April 2012

Letter from the Chair to David Lidington

EU CENTRAL ASIA STRATEGY (32932)

The Committee has asked me to thank you for your letter of 2 April 2012, in which you updated it on the review process; said that you would write again as it becomes clearer; and in the meantime sought to provide the Committee with "a general orientation at this stage on the current UK and EU approach to Central Asia", and on the areas covered by the Strategy.

You pointed out that, after discussion with Central Asian national co-ordinators in March-April, internal EU drafting will take place in April-May, with adoption of a revised EU Central Asia strategy by a subsequent European Council.

In this process, you say that you will be looking to achieve greater impact and a clearer focus on the areas where it can produce most benefit for the region's people and for UK/EU interests. You note that one important area to consider will be the need for a greater focus on security issues, given the significance of the ISAF drawdown and political transition process in Afghanistan over coming years. You also say that, as work is taken forward, you will ensure that the competence boundaries between the EU and its Member States are properly respected. The Committee notes the Government's approach, and looks forward to hearing from you further in due course.

In any event, it will expect to receive a deposited copy of the Strategy and your Explanatory Memorandum outlining its essence and your views on it in good time before whichever European Council it is submitted to (and sooner if, as would be normal, it first goes to the FAC).
18 April 2012

Letter from David Lidington to the Chair

DEMOCRATIC REPUBLIC OF CONGO: EUPOL AND EUSEC MISSIONS

I am writing regarding your letter of 18 January 2012 which set out the Committee's continuing interest in the EU POL and EU SEC DRC missions and asked for a further update following the expected dates for the strategic reviews in January/February (EUPOL) ad April (EUSEC). I would like to take this opportunity to update the Committee on timings.

The UK remains committed to ensuring that CSDP missions are complementary to broader UK and EU objectives and offer a good fit with the overall strategy. In the case of the DRC, following the recent elections, the UK with other Member States, has pushed for the EAS to review policy options for short, medium and long term priorities for EU engagement in DRC. We believe that this will be presented to the Political and Security Committee in April. It is therefore logical that the Strategic Review of both CSDP Missions take place after the overall DRC strategy discussion, in order to ensure that any decision on the DRC missions' future direction is situated within the broader EU policy context. This is in line with the UK's objectives to put the EU Comprehensive Approach into action, ensuring coherent joined up programming across the whole spectrum of EU crisis management activity.

We now expect the Strategic Review to take place at the end of May, ahead of the expiry of the current mandates in September 2012, examining EU engagement on security sector reform (SSR) in the round including both EUPOL and EUSEC missions and the EU Delegation's SSR programming. Once the Strategic Review has taken place, I will write again to the Committee as requested in your letter of 18 January 2012.

13 April 2012

Letter from the Chair to David Lidington

CSDP AND THE DEMOCRATIC REPUBLIC OF CONGO (DRC) (33098-99)

The Committee has asked me to thank you for your further letter of 13 April 2012, in response to the Committee's request for your thoughts on what the repercussions might be for EUPOL DRC and/or EUSEC DRC of the outcome of last November's elections; and in particular, once the dust had settled, whether you thought the mandate of each was likely to be further extended, amended or terminated.

You explained that:

- you remain committed to ensuring that all CSDP missions are complementary to broader UK and EU objectives and offer a good fit with the overall strategy;
- thus, following the recent DRC elections, you and other Member States have pushed for the EAS to review policy options for short, medium and long term priorities for EU engagement in DRC, which you believe will be presented to the Political and Security Committee in April;
- the Strategic Review of both CSDP Missions should accordingly take place after the overall DRC strategy discussion, in order to ensure that any decision on the DRC missions' future direction is situated within the broader EU policy context and is consistent with joined up programming across the whole spectrum of EU crisis management activity;
- you expect the Strategic Review to take place at the end of May, ahead of the expiry of the current mandates in September 2012, examining EU engagement on security sector reform (SSR) in the round, including both EUPOL and EUSEC missions and the EU Delegation's SSR programming;
- you will write again, once the Strategic Review has taken place.

The Committee notes the Government's overall approach, and looks forward to hearing from you again, as proposed. Then, of course, it would like to hear about not just the findings of the Strategic Review but also what action you think should now be taken with respect to the missions' future size, shape and scope.

18 April 2012

Letter from David Lidington to the Chair

STRATEGIC REVIEW OF THE EUROPEAN UNION RULE OF LAW MISSION IN KOSOVO (EULEX)

I am writing to update you on the outcome of discussions in Brussels regarding the Strategic Review of EULEX.

The findings of the review do not affect the UK's commitment to EULEX either in terms of personnel or in financial contributions. The key conclusions were:

- agreement, in principle, to extend EULEX's mandate until 2014;
- a refocusing of existing resources to northern Kosovo;
- greater emphasis on EULEX's executive responsibilities, notably within the justice sector; and,
- the mission will be downsized and restructured to reflect the shift in mandate.

EULEX continues to play a vital role in enabling Kosovo's rule of law institutions to achieve EU standards and in contributing to stability and security in both Kosovo and the wider Western Balkans. I welcome therefore the agreement, in principle, to extend the EULEX mandate until 2014. Before agreeing to this formally, I will of course need to be satisfied that the relevant Council Decision reflects accurately the findings of the Strategic Review and that the new EULEX budget is reasonable and justified.

As I said in my Explanatory Memorandum of 4 November, the UK has been pressing hard for EULEX to increase its presence and activity in northern Kosovo. This is essential for addressing the rule of law challenges there, which remain a threat to regional security and to the EU aspirations of both Kosovo and Serbia. I welcome therefore the commitment in the Strategic Review to refocus some of the existing EULEX resources on the north.

Challenges remain. EULEX's ability to manage effectively the situation in northern Kosovo is dependent on the provision of Formed Police Units (FPUs). EULEX currently has only one FPU (83 personnel consisting of Polish, and a handful of French gendarmes). The Strategic Review recommends that this unit relocates entirely to the north. This is helpful in terms of addressing civil disorder on a minor scale. But question marks remain over whether EULEX can act as an effective second responder. EU Member States will continue to discuss this issue outside of the Strategic Review, with a focus on (a) how to address the FPU shortfall in the longer term and (b) the need for close cooperation with NATO as its peacekeeping force in Kosovo, KFOR, continues to act as de facto second responder.

Due the committee's continued interest in EULEX, I would like to offer an informal briefing from senior officials to the Committee. Following this, as requested by the Committee at its meeting of 9 November, I will submit the new EULEX mandate for scrutiny once it is circulated by the EEAS, outlining how the findings of the strategic review have informed the new mandate and reporting on the progress made by EULEX in the six month period to 14 June 2012.
10 April 2012

Letter from the Chair to David Lidington

EULEX KOSOVO (33007)

The Committee has asked me to thank you for your letter of 10 April 2012, in which you updated it on the outcome of discussions in Brussels regarding the Strategic Review of EULEX.

You noted that the key conclusions of the Strategic Review were:

- agreement, in principle, to extend EULEX's mandate until 2014;
- a refocusing of existing resources to northern Kosovo;
- greater emphasis on EULEX's executive responsibilities, notably within the justice sector; and
- downsizing and restructuring.

You said that you endorsed this, noting that the UK has been pressing hard for EULEX to increase its presence and activity in northern Kosovo for some months because the rule of law challenges there remain a threat to regional security and to the EU aspirations of both Kosovo and Serbia — though also noting that, before agreeing to this formally, you will of course need to be satisfied that the relevant Council Decision reflects accurately the findings of the Strategic Review and that the new EULEX budget is reasonable and justified.

In the meantime, you kindly offered an informal briefing from senior officials, prior to submitting the new EULEX mandate for scrutiny once it is circulated by the EEAS; outlining how the findings of the strategic review have informed the new mandate; and reporting on the progress made by EULEX in the six month period to 14 June 2012. The Committee would, however, prefer to receive the draft mandate in the normal way and hearing what you have to say about it in your Explanatory Memorandum.

Then, as well as learning more about the findings of the Strategic Review and what action you think should now be taken with respect to the mission's future size, shape and scope, the Committee would be also be interested to know about what is being proposed with regard to the issue of Formed Police Units (FPUs), to which you draw attention. You explain that EULEX currently has only one FPU, and that the Strategic Review recommends that this relocates entirely to the north. You say that this is helpful in terms of addressing civil disorder on a minor scale, but that question marks remain over whether EULEX can act as "an effective second responder"; and that Member States will continue to discuss this issue outside of the Strategic Review, with a focus on (a) how to address the FPU shortfall in the longer term and (b) the need for close cooperation with NATO as its peacekeeping force in Kosovo, KFOR, continues to act as de facto second responder. Presumably this, too, will need to have been sorted out prior to the completion of the revised mandate.
18 April 2012

Letter from David Lidington to the Chair

Restrictive measures imposed on Burma – Parliamentary Scrutiny Override

I am writing with regard to EU restrictive measures against Burma.

During his recent visit to Burma, the Prime Minister publicly supported suspending all sanctions on Burma, apart from the arms embargo. This approach will recognise both the remarkable progress we have witnessed in Burma over the past 12 months, as well as the serious concerns that remain. Suspending sanctions will provide leverage to Aung San Suu Kyi, and to the international community, to ensure that the reform process will continue. This approach will also support Burmese President Thein Sein's position with hard-liners by allowing him to argue that the reforms he has embarked upon have delivered a significant easing of international sanctions, and that continuing reforms will bring further reward.

At the Foreign Affairs Council today, our EU partners agreed to support the UK's call to suspend sanctions against Burma. Negotiations on the Council Decision to bring this decision into effect will now begin, and as a result I do not have a Council Decision to share with your Committee at this time. Your Committee will of course be aware that if consensus cannot be achieved by 30 April, when the Council Decision expires, the sanctions will fall away in their entirety.

Given the uncertainty about the outcome of these negotiations, and the upcoming Parliamentary programme, I regret that as highlighted in my pre-recess letter of 20 March I will have to agree to the adoption of these documents before your Committee has been able to provide parliamentary scrutiny. However, my officials would be prepared to provide more in-depth briefing on the situation and the underlying policy driving our approach.

As you know, the responsibility to keep your Committee informed on issues concerning restrictive measures is something I take seriously and the need for the override of scrutiny on this occasion is regrettably unavoidable.

24 April 2012

Letter from the Chair to David Lidington

EU-BURMA: RESTRICTIVE MEASURES

The Committee has asked me to respond to your letter of 24 April, in which you informed it of the decision by the 23 April Foreign Affairs Council to suspend all restrictive measures, other than the arms embargo.

You explained why it will be necessary to override scrutiny with regard to the Council Decision that will give effect to the Council's decision, and why you believe it to be the right approach. You also said that your officials "would be prepared to provide more in-depth briefing on the situation and the underlying policy driving our approach."

The Committee appreciates your endeavours to keep it informed. However, it would prefer that the Explanatory Memorandum that will accompany the Council Decision, once it has been negotiated, should contain the information offered, so that the whole House may benefit from it.

25 April 2012

DEPARTMENT OF HEALTH

EUROPEAN COMMISSION'S PROPOSAL FOR A DIRECTIVE ON THE APPLICATION OF PATIENTS' RIGHTS IN CROSS-BORDER HEALTHCARE (11307/08)

Letter from Anne Milton to the Chair

I am writing to update you on the outcome of discussions of the above proposal at the EPSCO meeting on 8th

June 2010, where I represented the UK.

The Swedish Presidency's compromise was unable to gain political agreement at the Council in December 2009. All indications were that little progress would be made under the Spanish Presidency. It therefore came as a considerable surprise that at the end of April this year the Spanish came forward with new proposals. Following early negotiations it was clear there was a ground swell towards agreement in June amongst most Member States. I am pleased to be able to notify you that following further negotiations the compromise text proposed by the Spanish did receive political agreement on the 8th June.

The Spanish text retained 95% of that developed by the Swedish. However, there were four areas where further discussion was necessary: the legal basis of the Directive; the definition of the Member State of Affiliation and interaction between the Directive and Regulation 883; proposals on quality and safety in relation to non-contracted providers; and proposals on cooperation in eHealth.

On the first of these, the legal base, the Presidency proposed that there should be a joint legal base for the text between Article 114 (free movement of goods, services and people) and Article 168 (the competence of Member States to organise, manage and finance their health systems). The Government took the view that so long as Council Legal Services were of the opinion that such a dual legal basis was appropriate we would not oppose this move. This proposal was duly incorporated into the text.

On the second issue, the interaction of the Directive and Regulation 883, this has long been an issue of contention in the Council. Some States, led by Spain, were insistent that pensioners from one State resident in another under the regulation who use the Directive should have their costs met by the Member State of origin and not the State of residence. On the other hand, another group of States, including the UK, have argued that the costs already paid by one state to another under the Regulation cover all appropriate healthcare and that the effect of this change would be a double payment for the Member State of origin. The Spanish proposed a compromise whereby, for services that require prior authorisation under the Directive (hospital and specialised services), the Member State of Residence would meet the cost of treatment. On the other hand, where a resident pensioner wished to return to their original home State for treatment not requiring prior authorisation (planned non-hospital care) then the Member State of origin would meet the cost. This represented a significant concession by the bloc of countries led by Spain.

I have seen no evidence to suggest that there are significant numbers of UK pensioners resident elsewhere in the EU regularly returning to the UK for such care. I therefore judge that this would not have a significant impact on NHS resources. In addition, the UK argued strongly that when pensioners returned to their State of origin for such services that State should be able to apply the entitlement and gatekeeping provisions it applies to all patients resident in that country. This would ensure that pensioners returning home for treatment would not have greater entitlements than residents of the Member State of origin. This proposal was adopted and I believe it represents a good deal given it ensures that the UK will not be liable for additional costs incurred by UK pensioners resident in other Member States when they access healthcare needing prior authorisation under the Directive.

Thirdly, the Spanish proposed amendments to the Article on prior authorisation which are intended to allow Member States to refuse authorisation for a patient where the provider cannot demonstrate that it meets the quality and safety requirements of the Member State of treatment. In the Government's opinion, it would only be possible to use such a provision where there was concrete evidence of poor performance by providers. Otherwise, there would be a strong probability of this provision being struck down by the courts. Nevertheless, in my view, given that the use of the provision is discretionary and the UK would only use it where there was concrete evidence of failure we can accept the compromise.

Finally, on e-Health the Spanish compromise text introduced a revised article. This proposed new legally binding provisions on the essential data to be included in electronic health records, and on a technical framework to enable the use of medical information for public health and research. For the UK and many other States, this proposal was unacceptable. Following negotiations the UK and Germany secured amendments to the text including a new recital which clarified that work in the field of eHealth is a matter of voluntary cooperation.

Following political agreement, the Council and Commission will now pass the common position text to the European Parliament for its consideration, which is likely to commence in the autumn. I will of course update you on further significant developments from the next phase of this process.

Thank you again for your continued interest and support on this issue.
8 April 2010

Letter from the Chair to Anne Milton

We are grateful to you for telling us about the EPSCO Council's discussion of the draft on 8 June and the political agreement it reached on the Presidency's compromise text.

We are also grateful for your offer of further progress reports and look forward to receiving them.
8 September 2010

SCRUTINY OF DOCUMENTS ON DRAFT COUNCIL DECISIONS AUTHORISING THE PLACING ON THE MARKET OF PRODUCTS CONTAINING, CONSISTING OF, OR PRODUCED FROM GENETICALLY MODIFIED MAIZE

Letter from Anne Milton to the Chair

I refer to the Explanatory Memoranda numbered 10499/10; 10500/10; 10501/10; 105.02/10; 10503110 and 10505/10 being submitted to the Scrutiny Committee for its consideration.

I look forward to hearing the Committee's reaction to these six proposals, but I regret that this cannot be before the issues have been presented to the Council of Ministers.

The EU procedures for this type of decision require the Council to act on each proposal within three months of it being referred by the Commission. On this occasion the Agriculture Council has been asked to express a view on the authorisation of this genetically modified maize well within the 3 month deadline, on 29 June. This is because of current difficulties experienced by importers of commodity crops, mainly in the animal feed sector, due to the discovery of low levels of the GM maize in some imported consignments. Although the six types of maize have been assessed as safe for use in the EU, it cannot legally be present in food or feed, even at low levels, until an authorisation decision has been finalised.

It is very regrettable that, given the short period between the documents being transmitted and the vote being taken, and in view of the interruption in normal business due to the General Election, it has not been possible to complete the scrutiny of these proposals before the Council meeting but f wish to inform the Committee of the Government's decision to proceed.

The votes on the authorisation of these GM maize varieties were initially taken at the Standing Committee on the Food Chain and Animal Health in February and April this year. The Government will vote in favour of the authorisations in line with the scientific advice when the proposals are considered at the Agriculture Council meeting.

I hope that you will understand the rationale for proceeding in this exceptional case. I would like to stress that the decision to proceed with the vote was not taken lightly and the Government remains committed to the principles of national scrutiny of proposals that go before the Council of Ministers.

I am asking officials to discuss with the clerks to the scrutiny committees how we can ensure that this situation is avoided in future, as it is increasingly common for authorisation votes of this type to be placed on Council agendas at short notice.
28 June 2010

Letter from the Chair to Anne Milton

Thank you for your letter of 28 June, letting us know that six proposals regarding the marketing of food and feed containing varieties of genetically modified maize, which had been referred to the Council under the comitology procedures in Council Regulation (EC) No 1829/2003, were due to be voted upon on 29 June before they could be subjected to Parliamentary scrutiny.

We note that, although the Council is required in such cases to act no later than three months after a proposal has been referred to it, it has in these instances been asked to express a view well within that period, due to the discovery of low levels of GM maize in some imported consignments and the consequent need for an authorisation decision in order to enable the varieties in question to be legally present in food or feed. We also note that the UK believes that these decisions should be taken now, notwithstanding the absence of scrutiny clearance, and that it intended to support the proposals.

As you recognise, this course of action was a breach of the scrutiny reserve resolution, but we understand why the UK was anxious to see these particular proposals adopted, and the course of action taken. Having said that, it would clearly be better if votes of this kind were not to be placed on the Council agenda at such short notice, and we welcome the fact that you have asked officials to explore how this situation might be avoided in future.
8 September 2010

HUNGARIAN PRESIDENCY PRIORITIES FOR HEALTH OVER THE NEXT SIX MONTHS

Letter from Anne Milton to the Chair for information

I am writing to give you an overview of the main events that are planned during the next six months and to update you with the new Hungarian Presidency's priorities on health. I hope this will assist you in planning the business of your committee.

I understand that the Hungarian Presidency will focus on:

- imbalances in health workforce availability and the challenges that this presents;

- investing in the healthcare systems for the future, with the aim of agreeing Council Conclusions on ―modern, responsive and sustainable healthcare systems‖; and

- the role that e-Health can play in compensating for workforce shortages and in providing more evidence-based health policy.

The Presidency have indicated that they wish to open negotiations on the revised proposal for legislation on information to the public on prescription medicines, which is expected from the Commission in early 2011.

The Hungarian Presidency will put emphasis on health security and will organise a conference on childhood immunisation, with an aim of agreeing Council Conclusions at the EPSCO Council in June.

The challenges that an ageing population face will also receive attention. Initiatives such as the European Year of Active Ageing and Intergenerational Solidarity (2012) are of note. In addition, the future of the EU Public Health Programme will be discussed and attention will be paid to mental health, with the intention of agreeing Council Conclusions on mental health in June.

On the 4th and 5th of April, the informal meeting of the Ministers of Employment, Social Policy, Health and will take place, followed by the formal EPSCO Council on the 6th and 7th June.
31 January 2011

5431/08: Proposal for a Regulation of the European Parliament and of the Council on novel foods and amending Regulation (EC) No xxxlxxxx
[common procedure]

Letter from Anne Milton to the Chair

An Explanatory Memorandum on this proposal was submitted in February 2008 and was subsequently cleared by the Scrutiny Committees of both Houses. In early 2009, my predecessor provided your Committee with an update on the outcome of the Government's consultation on the proposal. This letter provides a further update on progress at the European Council and European Parliament, where the Council of Ministers adopted a Common Position in March 2010, and the European Parliament has completed its second reading.

Novel foods are defined in ED legislation as foods,. which have not been consumed in the ED to a significant degree before 15 May 1997. The proposed regulation is intended to replace and repeal the current regulatory framework for novel foods, but it does not alter the requirement for a pre-market safety evaluation.

The key objectives of the proposal are (a) for the European Food Safety Authority (EFSA) to carry out a single, centralised safety assessment thereby streamlining the authorisation procedure, (b) to develop a more adjusted safety assessment system for traditional foods from third countries, (c) to clarify the definition of a novel food, including new technologies with an impact on food and (d) to update the scope of the novel food regulation in relation to parallel legislation that applies to specific categories of foods.

The UK's negotiating position has, for the most part, been met with significant support and this is reflected in the common position. However, UK concerns relating to the definition of animals produced using non-traditional breeding practices (which includes cloned animals) together with reservations regarding the late inclusion of an imprecise definition for nonmaterial's were not resolved in text that was put forward for political agreement in June 2009. The UK therefore abstained, thereby registering our concerns without jeopardising the 'unanimity' that was required for the proposal to progress. The UK concerns were detailed in a minute statement.

The amended text, which is attached for your information, was not formally adopted as the Council's common position until March 2010 due to delays caused by the European Parliamentary elections and a requirement for redrafting to reflect procedural changes agreed in the Lisbon Treaty.

In August 2010, the European Parliament transmitted 103 second reading amendments to the Council. These amendments, which are attached for your information, chiefly concern the use of animal cloning for food production purposes and call on the European Commission to submit a proposal prohibiting the use of animal cloning in the food chain. The European Parliament's concerns about cloning were consistent with their position at first reading and their Resolution, issued in September 2008, calling for a ban on the use of the technology in the food chain.

The European Parliament's second reading amendments were unacceptable to Council and the proposal has now moved to conciliation. Direct negotiations between the Parliament and Council will take place during February and March 2011 within the Conciliation Committee framework with the aim of agreeing a joint text.

Animal cloning is a significant issue in the context of this proposal and a recent European Commission report looking at all aspects of this issue may pave the way for agreement at conciliation. Your Committee was made aware of the Commission's report (EM 15277/10). If the European Parliament and Council are able to agree on the future regulation of cloning and cloned animals, it may be possible to reach agreement on the remaining issues so that a new novel food regulation is agreed in the Spring of this year. The new regulation would then come fully into effect two years later, in 2013.

Current indications are that Member States have differing views with regard to the Commission's report. Given the strong views of the European Parliament, conciliation discussions are likely to be problematic with the prospect of failure to reach agreement a distinct possibility. If this were to happen then the current

regulatory framework would continue to apply.

I hope that this letter will provide your Committee with a useful update on the progress of the proposal. I will continue to keep you informed of developments as this dossier moves through the conciliation process.

I am aware that a considerable time period has passed since your Committee was last updated on this proposal. The Food Standards Agency has advised me that this was due, in part, to delays in the formal adoption and publication of the common position, followed by the UK general election. The Agency regrets the lack of updates to your Committee during this period and has given an undertaking to adhere closely in future to the Cabinet Office Guidance on updating Scrutiny Committees with regard to developments on co-decided European legislation.
10 FEB 2011

5431/08: Proposal for a Regulation of the European Parliament and of the Council on novel foods and amending Regulation (EC) No xxxlxxxx [common procedure]

Letter from Dawn Primarolo to the Chair

An Explanatory Memorandum on this proposal was submitted in February 2008 and subsequently cleared by the Committees in both Houses. In the EM I promised to provide you with the outcome of the Government's consultation on the proposal, and I would also like to provide an update on progress at the European Council and European Parliament.

As you will recall, Novel Foods are defined in EC legislation as foods which have not been consumed in the EU to a significant degree before 15 May 1997. The proposed regulation is intended to replace and repeal the current regulatory framework for novel foods, but does not alter the requirement for a premarket safety evaluation. The key objectives are for the European Food Safety Authority (EFSA) to carry out the safety assessment thereby streamlining the authorisation procedure, to develop a more adjusted safety assessment system for traditional food from third countries, to clarify the definition of a novel food, including new technologies with an impact on food and to update the scope of the novel food Regulation in relation to parallel legislation on specific categories of foods.

Consultation

The proposal has been subject to separate consultations in England, Scotland, Wales and Northern Ireland. The consultation was announced via the Food Standards Agency (FSA) website and email alert systems. A large number of organisations and individuals were individually notified of the consultation and were invited to a stakeholder meeting to discuss the proposal with FSA officials. There were 26 written responses to the consultation, mainly from trade associations as well as one consumer organisation. There were also responses from the RSPCA and PETA specifically concerning animal cloning. All the responses have been published on the FSA website.

Industry generally welcomes the proposal, noting that the centralised procedure could streamline the authorisation procedure, but the European Food Safety Authority (EFSA) will need appropriate resources to ensure that this occurs in practice. Industry is also supportive of both the simplified procedure for traditional products from third countries and the proposed system for protection of data supplied by applicants, but called for greater clarity in the scope and application of these new elements.

Consumer representatives welcome the proposal, but highlighted that the resources and expertise that EFSA will be able to apply to novel food evaluations should be consistent with the current input from the member states. They also wish to see greater clarity regarding the criteria for determining data protection and are concerned that a "history of safe use", if based largely on an absence of adverse reports, might not provide sufficient safety assurance for traditional foods from third countries. Also, consideration should be given to issues other than safety of these foods, notably labelling. A significant number of respondents also called for greater clarity as to whether food produced with the aid of animal cloning should be subject to pre-market

safety evaluation. The Commission's proposal matches the scope of the current regulatory framework for novel foods (Regulation (EC) 258/97), which covers animal cloning as a non-traditional breeding technology. The European Commission has recently reviewed the situation, taking account of reports published earlier this year by the European Group on Ethics in Science and New Technologies and by EFSA, together with a European Parliament resolution that calls for new legislation that would outlaw the use of cloning for food production. The Commission is currently considering whether cloned animals should be dealt with under a separate regulatory framework. According to this approach, food from cloned animals would be excluded from the definition of "novel food". It will however take some time for any new legislation to be developed and adopted and it seems sensible that the current level of control should be retained under the future novel foods regulation, until it can be replaced by a more comprehensive framework.

Timetable

The Slovenian and the French Presidencies have arranged a number of working party meetings to discuss this proposal with experts from the Member States and there have been no fundamental objections to the text. The new Czech Presidency is hopeful that Member States will agree an informal position in the near future that will form the Council's position during discussions with the European Parliament. The European Parliament's Environment Committee has complied its own list of possible amendments to the proposal and it is possible that there may be agreement at this first treading stage, which would allow the regulation to be adopted before the European Parliament elections in June.
28 JAN 2009

Letter from the Chair to Anne Milton

Thank you for your letter of 10 February.

As you say, this proposal was cleared by the previous Committee, but we were nevertheless grateful for this update, and for your offer to keep us informed of any further developments during the conciliation process.
2 March 2011

5431108: **Proposal for a Regulation of the European Parliament and of the Council on novel foods and amending Regulation (EC) No 133112008 [common procedure]**

Letter from Anne Milton to the Chair

An Explanatory Memorandum on this proposal was submitted in February 2008 and was subsequently cleared by the Scrutiny Committees of both Houses.

"Novel foods" are defined in ED legislation as foods which have not been consumed in the EU to a significant degree before 15 May 1997. The propose regulation is intended to replace and repeal the current regulatory framework for novel foods, but it does not alter the requirement for a pre-market safety evaluation.

On 10 February I provided your Committee with an update on progress at the European Council and European Parliament, which had moved to conciliation primarily because of concerns regarding the use of animal cloning in food production. I understand that direct negotiations between the Parliament and Council took place during February and March within the Conciliation
Committee framework with the aim of agreeing a joint text by the deadline of29 March.

With regard to animal cloning the Parliament took a clear stand against the use of cloned animals *and their descendants.* Most Member States, including the UK, were less restrictive in their approach (Explanatory Memorandum 15277110, prepared by Defra, refers) and recognised that restrictions on the descendants of clones could not be justified in terms of food safety or animal

welfare and that there would be consequences for enforcement and potential effects on international trade. These differences could not be resolved, despite lengthy discussions, and the Conciliation Committee therefore failed to reach agreement.

Two other issues were still under discussion in the final stages:
• the Parliament's involvement in technical decisions, including authorisation decisions for individual novel foods, under the new post-Lisbon comitology procedures. Member States considered that these decisions should be made by "implementing acts", Le. by the Commission in consultation with Member State experts. The Parliament argued for the "delegated act" procedure, which provides an opportunity for Council and Parliament to block each measure.

• whether ethical concerns should be explicitly taken into account when deciding whether to authorise a novel food in the ED. The possibility of agreeing final positions with the Parliament on these issues was not tested due to the lack of agreement on animal cloning.

As no agreement has been reached, the proposal cannot be adopted and the Commission will need to work up a new proposal and re-start the process. The Commission is reflecting on the next steps for the updating of the novel foods regulation and for animal cloning. In the meantime the current legislative arrangements for novel foods, which are still fully functioning, will continue to apply.

I understand that Defra Ministers will be providing further details on the animal cloning issues when they write to follow up their Explanatory Memorandum 15277/10.
1 April 2011

Letter from the Chair to Anne Milton

Thank you for your letter of 1 April, confirming that the Council and European Parliament have failed to reach an agreement on animal cloning, and that consequently the proposal to revise the Novel Foods Regulation cannot be adopted.

We have noted that the Commission will need to work up a new proposal, and, as you surmised, we have received a letter from Jim Paice, providing further details on the animal cloning issues, and indicating that the Commission now seems likely to bring forward two separate proposals dealing respectively with cloning and novel foods.
4 May 2011

EUROPEAN COMMISSION CONSULTATION ON COUNCIL DIRECTIVE 89/105/EEC ('THE TRANSPARENCY DIRECTIVE')

Letter from Earl Howe to the Chair

The European Commission is undertaking a review of Directive 89/105/EEC, which relates to the transparency of measures regulating the pricing of medicinal products for human use and their inclusion in the scope of national health insurance systems. The Directive sets out a number of requirements with the aim of making it possible to get an overview of national pricing arrangements and to understand the criteria on which decisions are based. The Commission is undertaking a review of the Directive to examine whether it requires updating in light of the major changes that have occurred in both the regulatory framework for medicines and Member States' approaches to medicines' pricing and cost-containment since the Directive was adopted in 1989.

The Commission has launched a public consultation on the possible revision of the Directive and has highlighted the following issues: to address problems of delays to market and improve market access, particularly for generic medicines; to ensure consistency between the Directive and increasingly complex and diverse innovative pricing and reimbursement procedures. To extend the Directive to include pricing and

reimbursement arrangements for medical devices and medicines that are used in tandem with a specific device or diagnostic.
The possible extension of the Directive to 'demand side' measures, e.g. financial incentives to prescribers, which impact on the internal market as much as pricing and reimbursement measures.

Our approach in responding to the consultation is to argue for minimal change:
The system for pricing and reimbursement of medicines in the UK leads to quick decisions and speedy access to medicines for patients without the delays, particularly for generic medicines, experienced in other Member States.
The UK does not use tendering or public procurement procedures to set the reimbursement price and there is no issue about the introduction of 'managed entry agreements' as Patient Access Schemes are part of the 2009 Pharmaceutical Price Regulation Scheme (PPRS).

There is a wide range of medical devices and demand side measures in the UK and depending on the scope of a future Directive, there would be the potential for increased administrative burden and costs. We, therefore, see no case for extending the Directive to pricing and reimbursement of medical devices, innovative /personalized medicines associated with diagnostic tests or demand side measures.

Possible outcomes following the review include 'do nothing' (i.e. maintaining the existing Directive as it stands); 'soft law' approaches, e.g. issuing best practice/guidance to sit alongside the Directive; or a revision of the Directive itself. We do not expect the Commission to reach a view on their preferred approach until the end of this year at the earliest. Whichever option is pursued, the Commission has emphasised that the focus of the Directive will remain on procedural aspects of pricing and reimbursement with no change to Member States' competency.

Please let me know if the Committee require any further information on the response to the consultation, or whether they would like to be kept updated on the review of the Directive.
23 May 2011

Letter from the Chair to Earl Howe

Thank you for your letter of 23 May which provides a useful summary of the Government's approach to the Commission consultation on the so-called Transparency Directive. We note your preference for minimal changes to be made to the Directive and will wait to see what, if any, action the Commission proposes to take later this year.
8 June 2011

17504/08 **Proposal for a Directive of the European Parliament and of the Council amending Directive 2001l83IEC as regards the prevention of entry into the legal supply chain of medicinal products which are falsified in relation to their identity, history or source**

Letter from Anne Milton to the Chair

I am writing further to our exchange in November 2010, when the Committee cleared these proposals from scrutiny but requested that we submit the finalised text at an appropriate time.

The Falsified Medicines Directive has now been agreed by the Parliament and the Council, and will be published in the Official Journal of the European Union on 1 July 2011.

I enclose the final text of the Directive. Please note that this document is provided to the Committee under the Government's authority and arrangements agreed between the Government and the Committee for the sharing of EU documents carrying a limite marking. It cannot be published, nor can it be reported on substantively in any way that would bring detail contained in the document to the public domain before 1 July.

In our previous letter, we mentioned the areas that we considered to be key UK negotiating points - these have now been agreed in the final texts as follows:

Ensuring all parties involved in the distribution of medicines must comply with the wholesale distribution requirements set out in Directive 20011831EC.

The text now includes the concept of "brokers" who deal in medicines but do not take possession of them. Brokers will be required at least to notify competent authorities that they deal in medicines and will be required to comply with other regulatory requirements as necessary. The UK has supported these changes as we have evidence that currently unregulated brokers are often implicated in counterfeit cases.

(ii) Proposals for compulsory safety features to be affixed to all prescription medicines and rules to ensure that parallel importers can open packs to insert national language leaflets and reseal with equivalent safety measures.

After considerable debate over the appropriate scope of this provision, an acceptable solution has been found in a risk based approach to the application of safety features to medicines subject to medical prescription, with scope for exclusion if an assessment demonstrates they are not at risk of counterfeiting. Non-prescription medicines will not carry safety features unless an assessment demonstrates that they are at risk of counterfeiting. The required risk assessment includes a range of considerations, including the price of the medicine, and we are confident that we can work to deliver our preferred outcome that medicines at the highest risk of counterfeiting are protected,
with exclusion of those that are not. The rules for removal and replacement of safety features by importers remain. The Commission will bring forward detailed proposals for the type of safety feature to be applied in separate legislation. There will be a Commission review of the operation of the safety feature provision after five years.

(iii) Ensuring that wholesale dealers who purchase medicines from other wholesale dealers are required to verify that the supplying dealer is compliant with EU good manufacturing practices.

These proposals were supported by Member States and remain in the agreed text. Wholesale dealers will also be required to record the batch numbers at least for medicines subject to the safety feature. This will assist in tracing medicines in the event that counterfeits are found in the supply chain, but can be limited to medicines subject to the safety feature to take account of the particular circumstances that apply in the UK (and Ireland) with significant sales of non-prescription medicines through supermarket-type outlets that would not currently be able to comply with batch number recording of such medicines through their supply chains.

(iv) Strengthening requirements for importers of active pharmaceutical ingredients (APIs) from countries outside the EU if that country has not demonstrated that it operates regulatory systems equivalent to the EU.

The Commission had proposed a regime that would have accepted a country's claim to comply with EU standards, with a confirmatory procedure to follow within 3 years. Member States (including the UK) felt that such confirmation should take place before a country was approved, and that even if a country could not be so approved, individual manufacturing sites in that country that could demonstrate compliance should still be able to supply the ED. This will avoid API supply problems. There is also included a regime for accreditation of 3rd party auditors (to standards laid down by the regulator) as a mechanism for manufacturers to check the quality of APIs they purchase from non-EU countries. This may provide scope for a shift to professional regulation rather than - as now - oversight and inspection where necessary by the regulator.

(v) Strengthening rules for inspections and publication of reports on the EU database.

These proposals were accepted by the Member States, Council and Parliament.

(vi) Clarifying the rules applying to medicines held in customs areas for re-export to 3rd countries.

After a great deal of concern expressed by Member States that the text should not place additional obligations on customs officials or interfere with legitimate international trade, the agreed text makes it clear that medicines authorities have right of entry to such areas. The agreed text clearly limits the scope of this

provision to better cooperation by medicines regulators with customs officials, in ways to be determined in separate legislation to be brought forward by the Commission but based on existing documentation.

There were two additional areas of concern during the negotiations. The first was the use of "delegated powers" under article 290 of the Treaty on the Functioning of the European Union (TFEU) which will give the Commission the power to bring forward supplementary legislation to underpin the changes to Directive 200l/83/EC. Delegated powers have been given to the Commission for setting out the detail of the proposed safety features and for guidance on what checks medicines regulators shall make in customs areas. The UK and most other Member States accepted the use of delegated powers for the former, but the UK and several other Member States opposed the use of this mechanism for the latter, preferring use of article 291 of the TFEU providing for "implementing acts". However, there was finally insufficient support for the UK view to prevail.

The second issue was concern amongst the Member States over limited regulatory controls over the quality of recipients (non-active additions to medicines that provide variously colour, stability etc). As some are derived from high risk sources (e.g. animal material) agreement has been reached to require a risk based review by manufacturers of the excipients they use and to apply relevant good manufacturing practices to them, providing suitable documentation to satisfy the regulator.

Negotiations with the European Parliament

At the point of our last correspondence, the ENVI Committee of the European Parliament (EP) had prepared a draft report with additional proposed amendments. The key areas of difference where we sought to engage are set out below.

(i) The EP strongly supported inclusion of controls over internet sales of medicines in this text. As a result, the agreed text includes rules governing who can legitimately sell medicines at a distance via the internet, an EU logo, linked to registries and a role for the Commission, together with the Member States, in promoting education campaigns about the dangers of purchasing medicines from unregulated sources. These systems are similar to the UK's current system of supervised internet pharmacy. The Commission has also been tasked with reviewing the prevalence of falsified medicines over the internet within 5 years.

(ii) The EP wanted to strengthen the text in respect of supervising brokers of medicines so that they are licensed rather than simply obliged to notify their names to the national competent authority. Whilst we agreed that more than a simple notification scheme is required if we are to have any meaningful control over such economic operators, there is no obligation in the text for Member States to introduce a licensing regime for brokers.

(iii) The EP has now accepted the UK's position for a risk based approach on safety features (as opposed to a limitation to prescription-only medicines) proposed by the Council's text. The Commission will review the safety features scheme after five years of operation.
28 June 2011

Letter from the Chair to Anne Milton

Thank you for your letter of 28 June which provides a detailed account of the content of the First Reading deal between the Council and the European Parliament on the aforementioned Directive. Although we cleared the draft Directive from scrutiny last October, we are grateful to receive such a comprehensive overview of the agreed final text of the Directive.
6 July 2011

16521/08: Proposal for a Directive of the European Parliament and of the Council on standards of quality and safety of human organs intended for transplantation

Letter from Anne Milton to the Chair

I am writing to let you know about the progress in implementing this Directive which cleared scrutiny in the Lords in March 2010 and in the Commons in September 2010.

Background
Directive *2010/53IEC* was adopted on 7 July 2010 and published in the Official Journal in August 2010. It sets standards for the safety and quality of all human organs intended for transplantation to the human body.

The Directive consists of a number of articles aimed at ensuring good practice, safety and efficacy in the way that organs intended for human application are donated, procured, characterised, tested, preserved, transported and transplanted.

The duty to ensure compliance with the requirements of the Directive will fall to the designated competent authority' in each Member State. We have agreed with the devolved administrations that this will be the Human Tissue Authority (HTA) for the UK.

Transposing the Directive into UK law
The draft Quality and Safety of Organs for Transplantation Regulations 2012 ('the Regulations') transpose the Directive into UK law. We have started an 8 week consultation on the draft Regulations. The consultation will end in mid-December.

This timescale provides time for the consultation comments to be fully considered in December and early January; for the definitive Regulations to be agreed and laid in Parliament between March and May 2012 and for them to come into force around May 2012. Simultaneously the HTA will consult on an accompanying Framework that will give further information on the proposed regulatory process.

Organisations that wish to carry out procurement and/or transplantation activities from 27 August 2012 will need to be licensed by the Human Tissue Authority. To minimise costs and burdens on the NBS, only those organisations that directly carry out procurement and transplant activities will need to be licensed - in effect around 40 UK NBS and private Trusts or hospitals and NBS Blood and Transplant.

We propose to adopt the licensing model used successfully for the regulation of tissue and cells. An organisation - usually a hospital, NBS Trust or equivalent - will apply to the HTA to be the licence holder and will appoint a Designated Individual (DI) to be responsible for the operational management of the licence to ensure that the licence holder complies with the requirements of the Directive.

We have worked closely with officials from the devolved administrations, with NBS Blood and Transplant and Human Tissue Authority throughout the negotiation of the Directive and the development of these Regulations. They are content with the Regulations to date and will work with us during the formal part of the consultation.

Scrutiny History
The European Commission first published its proposal for the above Directive in December 2008 (Com (2008) 818 Com (2008)819 final. The Directive cleared scrutiny on 8 September 2010.

Impact Assessment
We will make the Impact Assessment available at the same time as we consult on the transposition regulations to enable establishments to assess the likely costs of implementation. The UK already complies with much of the Directive requirements but full compliance will still incur some costs
and secure some benefits. These are summarised in Table 1 of the attached IA and have been identified through consultation with the Human Tissue Authority, NBSBT and clinicians within the transplant community.

The main burden placed by the Directive is the setting up of a new licensing regime for procurement and transplantation activities. The overall cost over a 10 year period for implementing the Directive in the UK is estimated at £21.30 million. The Directive will however enable the UK to tighten up its processes in relation to traceability and severe adverse event and reaction reporting. Specific questions will be asked as part of the consultation to assess the overall monetised benefits of the Directive over the same period. The costs of not

implementing the Directive could be considerable, incurring approximately £1 0 - 11 million in infraction costs.
27 OCT 1011

The Committee considered this letter 2 November 2011

Letter from Simon Burns to the Chair

16796/11, COM (2011) 709: Proposal for a Regulation of the European Parliament and of the Council on establishing a Health for Growth Programme for the period 2014-2020

Thank you for your letter of 22nd February 2012 responding to my letter of 6 February 2012 concerning the above proposal for a *Health for Growth* programme

As you know, the UK overall is supportive of the proposed *Health for Growth* Programme, but considers the main focus should be public health rather than healthcare.

The first four Articles of the proposed *Health for Growth* programme were discussed at the Council Working Group on Public Health on 6 February 2012. These include the main aims and objectives of the proposed programme. We raised a number of issues as agreed with the European Affairs Committee. A number of other Member States raising concerns about the title, scope and objectives of the proposal. Comments centred upon the division of competence between Member States and the EU in the proposal, and whether the new focus of the proposal was appropriately directed. The Commission's responses were not overly convincing on these points, largely arguing that they were simply responding to recommendations from the evaluation of previous programmes. The Presidency promised to produce a compromise text to address the concerns raised by Member States. This we hope will be discussed at future working group meetings.

In future working group discussions on this proposal, we hope to reiterate a number of the concerns mentioned by stakeholders whom we have consulted. These include the need to ensure that:

- health is seen as important in its own right not simply as a driver of economic growth
- health inequalities are addressed
- that appropriate weight is given to the different elements of the programme including a relatively greater prominence to health promotion and disease prevention
- that there is some degree of continuity between the new Health for Growth programme and the current Public Health programme

We will continue to keep you advised on progress.

I hope this is helpful.

1 March 2012

Letter from the Chair to Simon Burns

Draft Regulation establishing a Health for Growth Programme for the period 2014-20 (33360) (Council document 16796/11)

Thank you for your letter of 1 March which describes initial discussions in the Council working group considering the proposed Health for Growth Programme for 2014-20.
We note that you intend to reiterate concerns raised by UK stakeholders at future working group discussions. We look forward to hearing how they have been addressed once more progress has been made in the negotiations.

7 March 2012

HOME OFFICE

9906/10 PROPOSAL FOR A DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING THE DECISION NO 573/2007/EC ESTABLISHING THE EUROPEAN REFUGEE FUND FOR THE PERIOD 2008 TO 2013 AS A PART OF THE GENERAL PROGRAMME" SOLIDARITY AND MANAGEMENT OF MIGRATION FLOWS" AND REPEALING COUNCIL DECISION 2004/904/.EC - OUTCOME OF THE EUROPEAN PARLIAMENT'S FIRST READING (STRASBOURG, 17 TO 20 MAY 2010)

Letter from Damien Green to the Chair

I am writing to update the Committee on developments on the Commission Proposal for a Joint European Resettlement Programme and its funding under the European Refugee Fund.

The European Parliament adopted its first reading position on 18 May 2010 on the proposal for a decision of the European Parliament and of the Council amending Decision No 573/2007/EC establishing the European Refugee Fund (ERF) for the period 2008 to 2013 as part of the General programme "Solidarity and Management of Migration Flows" and repealing Council Decision 2004/904/EC (COM (2009)0456 - C7-0123/20092009/ 0127(COD)).

The aim of the proposal is to establish a European resettlement programme for the period 2008-2013 which will provide additional financial support to Member States resettling persons in accordance with annually identified common EU-level priorities building on the existing ERF decision 573/2007/EC. The envisaged EU resettlement programme is intended to encourage more Member States to participate in resettlement. The ERF currently provides support to Member States undertaking resettlement of €4000 (£3394.40) per resettled individual. The UK's resettlement programme, the Gateway Protection Programme, currently receives roughly 50 per cent of its funding from the ERF.

A decision taken by the Commission each year through a priority setting exercise will set these priorities for the following year. This will involve an annual forecast of resettlement needs prepared by the UNHCR, followed by consultation with Member States, UNHCR, NGOs and the European Parliament. The operation of this annual priority-setting exercise, and the role of the European Parliament in it, remains the outstanding area of difference between the Council and the European Parliament.

The main outstanding issue between the Council and the European Parliament is a procedural matter about the use of delegated or implementing acts for setting the annual priorities. The implications stretch beyond this specific proposal, which is why it has been difficult to resolve. The Council position is that this proposal should use the implementing acts procedure (article 291); whereas the European Parliament position is that it should be the delegated acts procedure (article 290). For the Parliament, it is important both to secure a guaranteed role in the annual priority setting exercise for the resettlement programme (which includes the ability to revoke or object to the delegation), but also, as this is also the first such financial dossier to come before the Parliament under co-decision, to ensure that the precedent set secures such a role for the European Parliament in future dossiers. The European Parliament has also been clear that they see this dossier as an extension of the foreign policy influence of the EU. The issue of precedent is of equal concern to the Council, which wants to see the use of the implementing acts procedure with the resettlement priorities set in the instrument.

For the purposes of the EU resettlement scheme the delegated acts versus implementing acts procedure refers to the mechanism by which the annual priorities for resettlement are set and the extent to which they are specified in the legislative instrument. Under the existing ERF instrument, which this proposal amends, there are four categories of persons for which Member States receive an additional €4000 (£3394.40) of funding:

• persons from a country or region designated for the implementation of a Regional Protection Programme;
• unaccompanied minors;
• children and women at risk, particularly from psychological, physical or sexual violence or exploitation; and

• persons with serious medical needs that can only be addressed through resettlement.

The European Parliament's position at first reading is that the categories of individuals for resettlement funding should be set in the legislative act; and that the delegated acts procedure set out in Article 290 TFEU should be used for the priority setting exercise (see European Parliament amendments 1, 3 and 5-11). The categories specified by the European Parliament also differ from the four categories already established in the ERF and include "survivors of violence and torture", and "persons in need of emergency or urgent resettlement for legal and protection needs", but do not include the category of individuals from Regional Protection Programmes.

Under the delegated acts procedure the European Parliament or the Council are able to revoke the delegation of powers to the Commission or object to the delegation, which would mean that it would not enter into force (the effect of which would be that annual priorities, and the associated funding for Member States which would flow from that, would not be established for the coming year).

The Council position is instead that the categories for resettlement should be specified in the instrument, but that the implementing acts procedure should then be followed for the annual priority setting exercise. This procedure gives less influence to both the European Parliament and the Council.

Other amendments:

The European Parliament has proposed introducing a tiered incentive scheme for this purpose (amendments 2 and 4), which would grant an increased amount of €6000 (£5091.60) per individual resettled for Member States resettling refugees for the first year, with €5000 (£4243) per individual for the second year, and €4000 (£3394.40) for the third and all subsequent years. The Government supported this as a means to encourage wider participation by Member States in resettlement, provided that it does not decrease the amount available to Member States that already resettle (including the UK) or increase in the overall financial envelope of ERF beyond current projections.
Neither the European Parliament nor the Council has been willing to move on this issue given the precedent that would be set. The incoming Belgian Presidency has indicated that they do not expect to make progress on this dossier during their Presidency.

I will keep the Scrutiny Committees informed of any further substantive developments in this area. This will include the outcome of the feasibility study and any legislative proposal.
24 June 2010

Letter from the Chair to Damian Green

Thank you for your letter of 24 June about this draft Decision.

We are grateful to you for explaining so clearly and fully the disagreement between the European Parliament and the Council about the procedure for setting the EU‘s annual policy priorities for the resettlement of refugees. The differences of opinion are clearly important and strongly held. We are grateful for your promise to write to us again when there is any progress to report.
24 June 2010

PROPOSED REVISION OF THE EU DIRECTIVE ON THE PROTECTION OF ANIMALS USED FOR SCIENTIFIC PURPOSES

Letter from Lynne Featherstone to the Chair

I am writing to update you on developments concerning the proposed Directive of the European Parliament and of the Council on the protection of animals used for scientific purposes.

Following further negotiations between the Council, the European Parliament and the Commission in April 2010, the Council adopted its first reading position on 3 June 2010. I attach a copy of the Communication from the Commission to the European Parliament concerning the Council's position at first reading (document 11260/10) and the final text (document 6106/1/10 REV 1). The text is substantially the same as Document 17299/09 referred to in the government response provided on 7 January 2010 to the House of Lords EU Select Committee report except that provisions are now included relating to delegated and implementing acts introduced in the Lisbon Treaty by Articles 290 and 291. We expect this text to be agreed at second reading without further amendment and the new directive to be adopted in the autumn 2010.

On balance, we are satisfied that the revised text provides a sound and practical framework for the regulation of animal experimentation and testing in Europe and sets a benchmark for the rest of the world. It is generally well balanced, more flexible and less prescriptive than the Commission's proposal and will allow the UK to maintain its traditionally high standards of welfare and animal protection. At the same time it avoids unnecessary bureaucracy and may offer opportunities to reduce the current regulatory burden in some areas without harming animal welfare.
1 July 2010

Letter from the Chair to Lynne Featherstone

Draft Directive on the protection of animals used for scientific purposes (30157)

Thank you for your letter of 1 July about this draft Directive.

We are grateful to you for explaining the course of the negotiations since December, culminating in the revised text the Council agreed on 3 June. We understand that the European Parliament is due to give the revised text a second reading on 9 September, with the expectation that the Directive will be adopted in the autumn.
8 September 2010

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING COUNCIL REGULATION (EC) NO 2007/2004 ESTABLISHING A EUROPEAN AGENCY FOR THE MANAGEMENT OF OPERATIONAL COOPERATION AT THE EXTERNAL BORDERS OF THE MEMBER STATES OF THE EUROPEAN UNION (FRONTEX) (DOCUMENT 6898/10)

Letter from Damian Green to the Chair

Thank you for your predecessor's letter of 7 April which sought the Commission's response to a question about the correct legal base for this proposal and for a progress report on the negotiations in the Council working group.

On 9 June 2010 we received written confirmation from the Council Legal Service that the correct legal basis for the proposal should be Articles 74 and 77(2)(b) and (d) rather than Articles 74 and 77 (1)(b) and (c) as originally proposed by the Commission. They clarified that Article 77(1) (b) and (c) describes the relevant objectives in relation to EU visa and borders policy, and that these objectives are transferred into the legal basis, empowering the legislator to act in Article 72(2) (b) and (d). On 1 July 2010 the Commission confirmed the position verbally and said that their error would be corrected.

The Belgian Presidency began the third reading of the Commission's proposals to amend the Frontex Regulation in the Council Working Group on Frontiers on 1 July 2010. They explained their intention to complete working group negotiations on the text by the end of the month and have scheduled meetings on 26 and 27 July accordingly. The proposal will then go to the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) in September and the European Parliament for further consideration. At Council, Member States have yet to agree text on the following provisions:
• Article 3: setting out Member States' ability to request to terminate Frontex operations;
• Article 3c: seconding national experts to Frontex for up to six months to support Frontex Joint Support Teams (FJSTs);

• Article 4: giving Frontex the mandate to evaluate the capacity of Member States to face threats at the external borders;
• Article 7: giving Frontex the mandate to purchase technical equipment;
• Article 11: the current draft does not give Frontex a mandate to share personal data collected in the context of Frontex operational activities as the Commission has asked for this to be put on hold pending a wider review of data sharing between European agencies. However the majority of Member States would like to see a provision in the Frontex Regulation that would allow the Agency to process personal data and share it with Europol.
• Articles 14 and 20: providing that the favourable opinion of the Commission is required before a vote at the Management Board on both Frontex's engagement with third countries and the Frontex staffing policy.

To date the UK's position has been that it favours giving Frontex a limited mandate to process personal data and supports a provision in Article 11 for this to be done. We believe this would enable better information flows from operations to the law enforcement agencies, such as Europol, and Member States who are able to use the data to counter organised immigration crime such as human trafficking and people smuggling.

On 9 March 2010, the UK set out our intention to seek an amendment to the Frontex Regulation to ensure that UK officers acting as special advisers on Frontex operations would be in the same position as the "guest officers" from Schengen and Schengen-associated countries whilst deployed on Frontex joint operations and pilot projects in relation to civil and criminal liability. Following continued discussions with Home Office Legal Advisers' Branch, Frontex, Council Legal Services, the European Commission, and the European Parliament we now believe that it would not be legally possible to make a provision that applied those provisions to the UK and thus guarantee the legal security we would like. This is due to the UK's exclusion from full participation in the Frontex Regulation on Schengen building grounds. We are therefore considering the advantages of entering into individual bilateral arrangements between the UK and other Member States in order to secure equivalent protections to those enjoyed by Frontex "guest officers" for UK officers assisting in Frontex operations and to take steps to secure a Council Declaration supporting this approach.
27 July 2010

DRAFT COUNCIL DECISION ON THE CONCLUSION OF THE AGREEMENT BETWEEN THE EU AND NORWAY AND ICELAND ON THE APPLICATION OF CERTAIN PROVISIONS OF THE PRUM COUNCIL DECISIONS (17709/10)

Letter from James Brokenshire to the Chair

I am writing further to the UK opt-in decision letter of 24 March which set out the Government's decision to opt in to this proposal.

Following the European Parliament's consent, the Presidency moved swiftly to table it for adoption on 26 July at the Foreign Affairs Council. That adoption has now taken place. Given that it has not cleared your Committee, I therefore wanted to inform you of the position of the UK.

The UK maintained its Parliamentary Scrutiny Reserve on the proposal and we chose to exercise our right to abstain during the vote itself. The UK also sought and secured wording in the adoption cover note to other Institutions and Member States to make our position clear. The proposal was subject to qualified majority voting, and therefore the Decision was adopted in spite of our abstention. While maintaining the Parliamentary Scrutiny Reserve and abstaining on that basis, the UK continues to agree with the principle and substance of the proposal in line with our decision to participate in the underlying Prum arrangements and to opt-in to this extension to Norway and Iceland.
29 July 2010

Letter from the Chair to James Brokenshire

Thank you for your letter of 29 July about this draft Council Decision.

We are grateful to you for your account of the UK's abstention during the vote in the Foreign Affairs Council in July and thus for maintaining the parliamentary scrutiny reserve on the draft Decision.
8 September 2010

PROPOSED REVISION OF THE EU DIRECTIVE ON THE PROTECTION OF ANIMALS USED FOR SCIENTIFIC PURPOSES

Letter from Lynne Featherstone to the Chair

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The text is substantially the same as Document 17299/09 referred to in the government response provided on 7 January 2010 to the House of Lords EU Select Committee report except that provisions are now included relating to delegated and implementing acts introduced in the Lisbon Treaty by Articles 290 and 291. We expect this text to be agreed at second reading without further amendment and the new directive to be adopted in the autumn 2010.

On balance, we are satisfied that the revised text provides a sound and practical framework for the regulation of animal experimentation and testing in Europe and sets a benchmark for the rest of the world. It is generally well balanced, more flexible and less prescriptive than the Commission's proposal and will allow the UK to maintain its traditionally high standards of welfare and animal protection. At the same time it avoids unnecessary bureaucracy and may offer opportunities to reduce the current regulatory burden in some areas without harming animal welfare.
27 September 2010

NEGOTIATING MANDATES FOR PASSENGER NAME RECORD (PNR) AGREEMENTS BETWEEN THE EU AND AUSTRALIA, CANADA, AND THE UNITED STATES

Letter from Damien Green to the Chair

I am writing to inform you that on 21 September, alongside a Communication on the global approach to transfers of Passenger Name Record (PNR) data to third countries the Commission also published recommendations to the Council to authorise the opening of negotiations for Agreements between the EU and Australia, Canada and the US for the transfer and use of Passenger Name Record (PNR) data to prevent and combat terrorism and other serious transnational crime. These recommendations include a set of negotiating guidelines for each Agreement.

The Commission's intention is to renegotiate the existing agreements held between the EU and the US and between the EU and Australia and to formalise the existing arrangements for PNR data transfer between the EU and Canada which is agreed by way of a series of letters. The existing Agreements between with the US and Australia are being applied provisionally but the European Parliament has refused to give its final consent to bring them into force, insisting instead on the development of new Agreements. This position was driven by the fact that the previous Agreements were negotiated prior to the entry into force of the Lisbon Treaty when the European Parliament had no role in the development of EU third country agreements.

The negotiating mandates are restricted and cannot therefore be deposited for scrutiny. However, I can tell you that they outline the EU's position on a number of key issues such as purpose limitation, data protection, the use of sensitive personal data, retention periods, and the right to access and redress. Several of the guidelines

are not detailed (for example, they only ask that PNR retention periods are _proportionate and limited', without specifying actual limits in terms of years) and it is expected that most of the key questions will be settled during the negotiation process.

I can confirm that the UK's opt-in applies to all three negotiating mandates, meaning that we will need to signal our decision to the Council Presidency on 21 December. However, we understand that the Presidency may be seeking to adopt the mandates at the Justice and Home Affairs Council currently scheduled for 2 and 3 December. If the UK decides to opt in to the mandates, we must notify the Presidency of our decision before adoption in order to take part in any vote. We will therefore be working to an expedited timetable in this instance.

In considering whether to opt in the Government will have regard to the fact that these negotiating mandates are the starting point in providing a firm legal basis for the transfer of PNR data from carriers to third countries. This is essential in the case of the US who require PNR data on incoming flights. We also believe that PNR transfer and analysis is an important counter-terrorism and serious crime prevention tool, and is vital to improving aviation security. We would of course welcome the views of the Committee to inform the Government's position and I will keep the scrutiny committees informed as the process of finalising our decision continues.

I would also like to use this opportunity to advise the Committee that I am today laying an Explanatory Memorandum before Parliament in relation to the Communication on a global approach to transfers of Passenger Name Record (PNR) data to third countries.
7 October 2010

Letter from the Chair to Damien Green

Thank you for your letter of 7 October. The Committee was grateful for the information it contained, and that a letter was sent prior to the adoption of the mandates by the Council.

Because of the stance that the UK has taken to previous EU PNR Agreements with third countries, and the value which UK enforcement agencies attach to PNR, we think it likely that the UK will opt into these mandates. In any event, we look forward in due course to your confirmation of the UK's opt-in decision.
16 November 2010

Letter from the Chair to Lynne Featherstone

Thank you for your letter of 27 September about this draft Directive.

We are grateful to you for informing us that the plenary session of the European Parliament on 8 September approved the Council's first reading position on the draft Directive and that the Directive is therefore deemed to have been adopted.
13 October 2010

Update on the UK challenge to the UK's exclusion from law enforcement access to the Visa Information System

Letter from James Brokenshire to the Chair

Update on the UK challenge on the UK's exclusion from Law Enforcement access to the Visa Information System

I am writing to update you on developments in the UK's challenge to its exclusion from access to VIS for policing purposes.

The European Court of Justice delivered its judgment on 26 October 2010. It found against the UK and confirmed that the UK's exclusion from participation in the law enforcement access measure stands.

In finding against the UK the Court emphasised that in determining whether or not a particular EU measure develops the Schengen *acquis,* it was important to take into account not just the aim and content of the individual measure but also the need to maintain the coherence of the Schengen *acquis.* On the facts of this particular case this meant that, while the Court accepted the UK's argument that the VIS Decision was concerned with police cooperation, in light of the fact that such cooperation would be based on accessing visa information and UK participation would require special arrangements to be put in place to allow the UK to access the VIS database, the measure was properly classified as a measure building on the common visa policy provisions of the Schengen *acquis.*
We are disappointed in the Court's decision. Although the UK retains independent border controls, we saw value in having access to information on visas issued by our European counterparts to assist in criminal investigations and to help clamp down on fraudulent visa applications. However, there is no right of appeal.

I attach a copy of the judgment.
4 November 2010

Letter from the Chair to James Brokenshire

Thank you for your letter of 4 November informing us of a recent Court of Justice ruling confirming the UK's exclusion from Council Decision 2008/633/JHA which establishes the conditions under which designated law enforcement authorities and Europol may obtain access to data held in the Visa Information System (―VIS‖) for the purpose of preventing, detecting and investigating terrorist or other serious criminal offences.

We find it helpful to have early sight of the Court's judgment and we are grateful to you for taking the trouble to summarise it for us.
17 November 2010

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL ON THE APPLICATION OF DIRECTIVE 2005/85/EC OF 1 DECEMBER 2005 ON MINIMUM STANDARDS ON PROCEDURES IN MEMBER STATES FOR GRANTING AND WITHDRAWING REFUGEE STATUS (Document 13404/10, COM (2010) 465)

Letter from Damien Green to the Chair

I am writing in response to the Committee's draft report of 13 October 2010 on the European Commission's evaluation report on the implementation of the Asylum Procedures Directive. The Committee has requested further information in light of their concerns regarding the practical utility of the Commission's evaluation. Please accept my apologies for not replying by the requested deadline.

As you are aware, I share your concerns about the feasibility of the Commission's reporting methods and the inaccuracies in their report. I believe that some of the shortcomings of this report can be attributed to the lack of evidence to substantiate the assertions that have been made and I am somewhat concerned that the Commission has not produced any data to verify its point about Member States' implementation of the Directive. In accordance with Article 43 of the Directive, the UK produced a transposition table setting out how the Directive was put into practice in domestic legislation. This in my view should have been a starting point for the Commission's evaluation; however it does not seem to have aided the report's findings. We have also completed questionnaires for the Commission's benefit; nevertheless it is apparent from their report that their analysis of them has painted what in many respects is a distorted picture of our asylum processes.

In my view, the evaluation of EU legislation on asylum should be a co-ordinated effort between Member States, the Commission and the UNHCR. This should be done with as much consultation as possible and early engagement is vital. Similarly, I think it would clearly benefit Member States to have access to the draft report

and to be able to propose amendments before the final evaluation is published. This would give an opportunity for Member States to make observations on the evaluation and would make the final version more accurate.

I accept that the implementation of the current Directive has been uneven across the EU, but I do not accept the Commission's conclusion that this problem will be solved by further legislation. In our view, participating in the greater harmonisation of asylum law at which these Directives aim is not in our national interest. It will place further restrictions on our ability to formulate our own independent asylum policy, and is a distraction from what we see as the key task of the EU in the asylum field- working together at a *practical* level to improve decision making quality and build up Member States' asylum capacity.

The Government has supported the introduction of the European Asylum Support Office (EASO). We believe that the office has an important role to play in strengthening practical cooperation between member states and helping build the capacity of systems especially where member states face particular pressures. We believe this is the most effective way to strengthen asylum processes across the European Union.

Further to the last query that you raise regarding the issue of repeal and replace, I am aware of the position that the previous Government took and of the contrary arguments made by your Committee and by the Commission. I will come back to you on this point shortly.

The UK remains bound of course, by the current Asylum Procedures Directive, until at least the new one is agreed and the Commission may choose to begin infraction proceedings if in their view we have not implemented the Directive. However, we disagree with the criticisms in the report and we are confident that to date we have fully implemented the Directive as required and can defend our actions. We note that the Commission has not taken proceedings against us so far.
3 November 2010

Letter from the Chair to Damien Green

Thank you for your letter of 3 November which responds to questions we raised in our report of 13 October.

We agree that it would seem to make sense for the Commission to allow Member States to comment on draft reports evaluating their implementation of EU Directives, not least so that any concerns about factual inaccuracies can be considered, prior to publication.

We note that the Government has not reached a final view on whether the UK would remain bound by the 2005 Directive on asylum procedures if the proposed recast Directive (which would repeal and replace the 2005 Directive) were to be adopted without the participation of the UK. You say that you will come back to the Committee on this point shortly. We await your response with great interest.
17 November 2010

Proposal for a Regulation of the European Parliament and of the Council on the marketing and use of explosives precursors (Document No.*14376/10)*

Letter from Baroness Neville-Jones to the Chair

Thank you for the copy of your draft Committee report, dated the 3rd November, in which you asked for clarification on issues concerning the exemption of farmers and the delegated powers of the European Commission.

The Committee asks about the potential for exploitation of the exemption, by those posing as farmers in order to source highly concentrated ammonium nitrate. The answer is that we believe this risk can be effectively mitigated through existing schemes and by working with industry.

As the Committee observed, in the UK there is no regulated registration process for farmers wanting to purchase highly concentrated (above 16% nitrogen content) fertiliser. However, sale to reliable and known customers and reporting of suspicious approaches in accordance with "Know your Customer" procedures has long been embedded in the fertiliser sales regime in the UK. The Fertiliser Industry Assurance Scheme (FIAS), while being voluntary, is run by industry for industry with UK Government endorsement of the standards that the scheme sets.

The scheme assures safety and traceability in the fertiliser supply chain, including all fertiliser intended for agriculture, horticulture, forestry and any other commercial use. It covers the principles of legal compliance (product, environmental and safety), security of stores, traceability of the product from raw material to consumer and effective Management controls to ensure that fertiliser is only sold to legitimate agricultural businesses and that these requirements as well as environmental measures and relevant industry Codes of Practice are implemented. This scheme means that FIAS accredited companies can control to whom they sell. They are also encouraged to sell to known farming customers only. Companies accredited under FIAS are externally audited to ensure compliance. The government is satisfied that this provides safeguards on sales to genuine users only without adding to the cost burdens borne by farmers. FIAS does not cover on-farm storage of fertilisers. Running alongside FIAS, however, is the 'Secure Your Fertiliser' scheme. This voluntary initiative, endorsed by UK Government and the National Farmers Union is aimed at raising security awareness among farmers to ensure that their fertiliser stores are kept secure against theft. The scheme also encourages farmers to buy from FIAS accredited companies, creating a controlled relationship between supplier and user.

The uptake of these schemes in the agricultural industry has been high (9095% of the fertiliser business sector) and the relationship between Industry and Government on this subject is robust. The new Regulation will sit alongside and help develop FIAS best practice guidelines. We are confident that no further formalisation of the process through regulation is required at this time. The FIAS scheme does not apply to fertilisers packaged for home garden use. The application of the REACH legislation has, however, resulted in a lowering of the nitrate levels in fertiliser available for use by the general public and any attempts by new customers to source higher concentrations from main suppliers should be captured by the existing processes.

You also asked whether I am satisfied that the scope of the delegated powers conferred on the Commission is reasonable and justified. I believe that the powers conferred upon the Commission by the proposed Regulation are necessary, reasonable and proportionate. The purpose of the Regulation is to establish harmonised rules concerning the availability on the market of substances that could be misused for the illicit manufacture of explosives. It seeks to achieve this aim by regulating the availability of these substances to the general public.

The Regulation gives the Commission power to make amendments to the Annex which lists the substances of concern. As the Preamble notes at paragraph 12 of the Regulation, the chemical substances used by terrorists and other criminals to make home-made explosives can change rapidly. I therefore consider that it is necessary for the Commission to have the power to amend the list of substances of concern and, at times, do this under an expedited procedure.

The Regulation empowers the Commission to make amendments to the list under a normal procedure or under an "urgency procedure". In either case the European Parliament or Council can object to the amendment which, in the case of the normal procedure, has the effect of preventing the amendment coming into force and, in the case of the "urgency procedure" has the effect of ensuring that it ceases to apply. I consider that these are sufficient checks on the Commission's delegated powers.

The Regulation also gives the Commission the power to draw up guidelines on the technical details of licences required to acquire a substance of concern. This is to assist in the mutual recognition of licences between Member States. Furthermore, the Regulation gives the Commission the power to draw up and update guidelines to assist the chemical supply chain by, for example, providing information on how to recognise and notify suspicious transactions and by providing a list of substances not in the Annex to enable the supply chain to monitor on a voluntary basis the trade in such substances. When drawing up these guidelines the Commission must consult the Standing Committee on Precursors which is an advisory Committee composed of EU Member State experts and representatives of the private sector, chaired by the Commission.

We believe that it is justifiable and proportionate for the Commission to have these powers since such guidelines promote and facilitate a harmonised approach to the implementation of the Regulation across Member States which is essential for its efficacy. Given the cross border nature of terrorism, it is clearly in the UK's interests that all other Member States are working together in a coordinated way to regulate the availability of chemicals of concern to the general public within the EU.
16 November 2010

Letter from the Chair to Baroness Neville-Jones

Thank you for your letter of 16 November responding to issues we raised in our Report of 3 November on the proposed Regulation on the marketing and use of explosives precursors.

We are grateful for your careful assessment of the delegated powers conferred on the Commission and note your conclusion that they are necessary, reasonable and proportionate.

We are also grateful for your description of the voluntary, industry-wide safeguards applicable in the UK which seek to ensure that fertilisers with a high nitrogen content can only be sold to genuine users while also minimising the cost burdens to be borne by farmers. You say that these sorts of industry-led schemes should effectively mitigate the risk that individuals posing as farmers may rely on the exemption in Article 4(4) of the draft Regulation and make unlicensed purchases of highly concentrated ammonium nitrate.

While we accept that the safeguards you have described may be reasonably robust for purchases made by UK buyers in the UK, we note that the purpose of the proposed Regulation is to introduce common EU rules which will strengthen safeguards applicable to cross-border sales and purchases. We would therefore welcome your views on the existence and adequacy of safeguards which would apply in the following hypothetical cross-border situations:

 An individual normally resident in the UK travels to another EU Member State, claims to be a farmer and seeks to purchase high concentrate ammonium nitrate; and

 An individual normally resident in another EU Member State travels to the UK, claims to be a farmer and seeks to make a one-off purchase of high concentrate ammonium nitrate from a UK supplier.

You will recall that we also asked in our Report to be informed of the Government‘s impact assessment of the likely costs of implementing the proposed Regulation for industry and consumers and we look forward to receiving this in due course. Meanwhile, the proposal remains under scrutiny.
8 December 2010

Update on the UK challenge on the UK‘s exclusion from Law Enforcement access to the Visa Information System

Letter from James Brokenshire to the Chair

I am writing to update you on developments in the UK‘s challenge to its exclusion from access to VIS for policing purposes.

The European Court of Justice delivered its judgment on 26 October 2010. It found against the UK and confirmed that the UK‘s exclusion from participation in the law enforcement access measure stands.

In finding against the UK the Court emphasised that in determining whether or not a particular EU measure develops the Schengen *acquis*, it was important to take into account not just the aim and content of the individual measure but also the need to maintain the coherence of the Schengen *acquis*. On the facts of this particular case this meant that, while the Court accepted the UK‘s argument that the VIS Decision was concerned with police cooperation, in light of the fact that such cooperation would be based on accessing visa

information and UK participation would require special arrangements to be put in place to allow the UK to access the VIS database, the measure was properly classified as a measure building on the common visa policy provisions of the Schengen *acquis*.

WE ARE DISAPPOINTED IN THE COURT'S DECISION. ALTHOUGH THE UK RETAINS INDEPENDENT BORDER CONTROLS, WE SAW VALUE IN HAVING ACCESS TO INFORMATION ON VISAS ISSUED BY OUR EUROPEAN COUNTERPARTS TO ASSIST IN CRIMINAL INVESTIGATIONS AND TO HELP CLAMP DOWN ON FRAUDULENT VISA APPLICATIONS. HOWEVER, THERE IS NO RIGHT OF APPEAL.

I attach a copy of the judgment.
17 November 2010

Letter from the Chair to James Brokenshire

Thank you for your letter of 17 November which provides further information on issues we raised in our Report of 3 November.

We note that you share our concerns about the imprecise drafting of a number of Articles establishing criminal liability and that you intend to address this during negotiations.

We are grateful to you for highlighting two provisions of the draft Directive which would extend the basis for establishing jurisdiction for certain offences or offenders under UK law, notably by weakening the link to the UK required under the Computer Misuse Act
1990. We agree that the meaning and purpose of these provisions should be further clarified in negotiations and note that you would not support a change to UK law which would reduce the existing link.

We await with interest the Government‘s decision on whether or not to opt into the draft Directive. Meanwhile, the proposal remains under scrutiny.
8 December 2010

PROPOSED EU AMENDMENT TO REGULATION (EC) No 539/2001 LISTING THE THIRD COUNTRIES WHOSE NATIONALS MUST BE IN POSESSION OF VISAS WHEN CROSSING THE EXTERNAL BORDER OF MEMBER STATES AND THOSE WHOSE NATIONALS ARE EXEMPT FROM THAT REQUIREMENT

Letter from Damien Green to the Chair

I am writing to update you on the Outcome of the European Parliament's first reading of the proposal for a Regulation of the European Parliament and Council amending Regulation (EC) No 539/2001.

In accordance with the provisions of Article 294 of the Treaty on the Functioning of the European Union (TFEU) and the joint declaration on practical arrangements for the Ordinary Legislative Procedure (formerly co decision), a number of informal contacts have taken place between the Council, European Parliament and Commission with a view to reaching an agreement on this dossier at first reading.

The attached communication of 15 November 2010 from the Council of the European Union (Document 16088/10) reports that the European Parliament voted on 11 November 2010 to adopt an amendment to the proposal for an amendment to Regulation (EC) No 539/2001, and instructed its President to forward this position to the Council and the Commission. The amendment corresponds to what was agreed between the three institutions and is expected therefore to be adopted by the Council.

The amendment adopted by Parliament to Regulation (EC) No 539/2001 is as follows:
1) In Annex 1:

• the reference to Northern Mariana is deleted from Part 1, as the citizens of that territory are holders of US passports and therefore citizens of the United States, already listed in Annex 11.
• the reference to Taiwan is deleted from Part 11, as the imposition of the visa requirement on citizens of this territory is no longer considered justified.
2) In Annex 11 the following text is added: Entities and Territorial Authorities that are not recognised as states by at least one member state: Taiwan(*)
(*) the exemption from the visa requirement applies only to holders of passports issued by Taiwan which include an identity card number.

This Regulation constitutes a development of provisions of the Schengen acquis in which the UK does not take part, in accordance with Council Decision 2000/365/EC 29 May 2000. The UK is therefore not bound by or subject to this.

The Regulation will enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.
21 December 2010

Letter from the Chair to Damien Green

Thank for your letter of 21 December informing us of the agreement reached at first reading between the European Parliament and Council on the draft Regulation amending the EU's Common Visa List Regulation of 2001. We note that the UK does not take part in, and is not bound by, the 2001 Regulation; nor will it take part in or be bound by the draft amending Regulation agreed by the EP and the Council.
12 January 2010

THE UK'S OPT-IN TO NEGOTIATING MANDATES FOR PASSENGER NAME RECORD (PNR) AGREEMENTS BETWEEN THE EU AND AUSTRALIA, CANADA, AND THE UNITED STATES

Letter from Damien Green to the Chair

Thank you for your letter of 17 November in which you acknowledged receipt of my letter of 7 October and requested that you be informed of the UK's opt-in decision.

I write to advise that, following consultation with my Ministerial colleagues in the European Affairs Committee and the Devolved Administrations, the UK Government has decided to opt in to these negotiating mandates.

We informed the Presidency of our decision on 1 December 2010; before the Justice and Home Affairs Council of 2/3 December 2010. Following the adoption of the mandates and having regard to the likely duration of the subsequent negotiating process, I anticipate that the new PNR Agreements will be ready to sign and conclude in early 2011. The UK position is that the opt-in will also apply both to the signature and to the conclusion of the Agreements. I will of course write to you again providing a full analysis before any opt-in decision at those later stages is made.
14 December 2010

HUNGARIAN PRESIDENCY PRIORITIES FOR JHA. ISSUES OVER THE NEXT SIX MONTHS

Letter from James Brokenshire to the Chair

I am writing to give you an overview of likely activity during the Hungarian Presidency on JHA issues during the next six months, in terms of those dossiers covered by the Home Office. I hope that this will assist in the planning of your scrutiny of dossiers heading to the JHA Council in this period. For information, the current timetable for consideration of dossiers at JHA Councils under the Hungarian Presidency is: 24-25 Feb 2011

(Brussels) 11-12 Apr 2011 (Luxembourg) 9-10 Jun 2011 (Luxembourg) The Hungarians will take over the rotating EU Presidency on 1 January 2011. As the last of the current Trio of Presidencies (Spain, Belgium and Hungary), Hungary will also inherit a body of outstanding work, including the implementation of the decisions taken in 2010. The UK already has excellent operational and government relations with the Hungarians and is prepared to support them to deliver their priority areas.

The anticipated publication by the Commission of the Passenger Name Records Directive (PNR) and the review of the Data Retention Directive during the Hungarian Presidency will bring data-sharing issues into focus. The UK supports the creation of an EU legal basis for the collection of PNR. We have lobbied the Commission to publish the Directive quickly and to include intra-EU flights, which are an essential element in the UK's e-Borders system. For several Member States, the wider debate surrounding security, protection of personal data and civil liberties is a sensitive one and the UK will make the case for PNR collection, accompanied by proper and robust data protection safeguards, in the interests of protecting EU citizens and security. This case will be vital if we are to persuade other Member States of the need to include intra-EU PNR within the Directive. We are lobbying the Hungarian Presidency to secure sufficient opportunities for discussion of intra-EU PNR in the Directive following publication, and ahead of our opt-in decision. There will also need to be early and sustained engagement with the European Parliament on the proposal. The Hungarians will also inherit the work to negotiate EU PNR Agreements with the US, Canada and Australia. Conclusion of these remains a priority for the UK, not least to give the airline carriers some certainty in their operations, and the UK hopes the final agreements will reflect existing arrangements as far as possible, whilst recognising the European Parliament will be seeking additional safeguards.

We expect part of a JHA Council is likely to be dedicated to counterterrorism as the Hungarian Presidency is interested in the linkage between internal and external dimensions. There will be an opportunity to coordinate and operate an approach that takes account of both aspects. They are also keen to achieve an outcome in this area under their Presidency. .The UK welcomes a review of external priorities for EU spending to tackle the root causes of terrorism. The Commission also intends to launch a Communication in 2011 to look at the experience that has been gathered in countering radicalisation and recruitment linked to terrorism in the Members States. This will provide the basis for reviewing and updating the existing EU Strategy and Action Plan. Internal terrorist listing will proceed under the Hungarian Presidency, which the Commission is expected to bring forward a legislative proposal in the next year.

We understand the Commission will continue to develop its thinking on an EU Terrorist Finance Tracking programme, as trailed during the adoption of the EU-US TFTP earlier this year. We expect discussion to continue on proposals in the Commission's Internal Security Communication. Our current understanding is that COSI, the EU Standing Committee on operational cooperation in internal security, will draft Council Conclusions on the Communication to be agreed by JHA Council in the first half of 2011. Proposals will also be brought forward on the foreseen 'Internal Security Fund'. The Hungarian Presidency will address this subject over lunch at the informal meeting of JHA Ministers in January 2011.

Hungary intends to give high priority to cyber safety and cyber crime and implement practical and cost effective actions to tackle the changing nature of criminal and terrorist activity. They are planning to hold a Ministerial Conference on cyber crime in April 2011. They will take forward negotiations on the Directive on attacks against information systems, issued on 29 September. The Hungarians have indicated that the fight against organised crime will be one of their Presidency priorities. The Hungarian Presidency will address this subject at the informal meeting of JHA Ministers in January 2011. Their approach on organised crime takes on board the UK's emphasis on practical mechanisms, and there are plans to start a project group on operational aspects, which will focus on "alternative approaches" or "new methods" to tackle organised crime. In addition they will have specific milestones to deliver against the EU Policy Cycle on Organised Crime. The UK is interested in exploring stronger Member State practical co-operation between law enforcement agencies on counter terrorism and tackling organised crime, including counter narcotics. The UK will offer support to identify and set up further Joint Investigation Teams. On counter narcotics we will assist with targeting the trade in legal and semi-controlled chemicals used to bulk cocaine and heroin. EU work on asset recovery and best practices in the administrative/non-penal approaches to tackling organised crime, working in collaboration with EU agencies, also needs to continue. Work to identify and target criminal finances and tackle "Mass Market Fraud" will feature. The UK would consider supporting a recommendation to incorporate new information flows, which may be the better option.

The Hungarians will give attention to asylum and immigration related issues driven by ongoing negotiations and new Commission proposals.. Hungary supports the new asylum and immigration strategy presented in November and work on the adoption of the proposals aiming at the creation of a Common European Asylum System (CEAS) will continue, with amended Commission proposals on Dublin, Procedures and Reception Conditions expected in the first few months of 2011. We expect Hungary to continue the Belgian Presidency prioritisation (Qualification Directive, Dublin Regulation and Eurodac Regulation), and to seek areas where compromises between the Council and Parliament may be possible. The Presidency will need to coordinate the Council's responses to Commission Communications, including on solidarity and on an evaluation of EU Readmission Agreements. On the external agenda, the Hungarian Presidency will focus on Eastern migratory routes (Building Migration Partnerships'). Hungary will do, they can to ensure the Visa Information System (VIS) is operational by June, as planned. They will also look to complete negotiations on the .Frontex Regulation, and to make progress on the EU-Turkey Readmission Agreement. On legal migration, Hungary will continue to progress negotiations on the three Directives: ICTs, Seasonal Workers and Single Permit. They may seek a European compromise on the integration of Roma.

During the Hungarian Presidency further progress should be made in the establishment of the European Asylum Support Office (EASO). The .UK will seek to focus its work on capacity building, value for money and practical cooperation, with particular emphasis on the Greek Action Plan for asylum reform.

Hungary will inherit a number of initiatives from the Belgian Presidency, including the European Investigation Order (E10). The Government opted in to this Directive and looks forward to progress under the. Hungarian Presidency.

Hungary supports Bulgarian and Romanian accession to the Schengen acquis, but this now seems unlikely to happen during their Presidency.

The Hungarians are also seeking to strengthen the EU's relationship in the field of Justice and Home Affairs with other non-EU countries. Relations with Russia will focus on data protection. A second round of negotiations is scheduled for February 2011. Budapest will host the second Eastern Partnership Summit in May 2011 with a view to strengthening the relations between the Union and its six Eastern Partners. The Commission are still considering the proposal to lift the visa requirement for short stay visits for the Ukraine. However there is concern that there are still elements of the roadmap that need to be addressed. The Hungarians will need to consider the role of the *European* External Action Service (EEAS).

Baroness Ashton and the European Commission may also bring, forward cross-cutting proposals for arrangements to implement the Solidarity Clause. HMG recognises the political importance attached to the Clause, and will examine the proposed implementing arrangements in the context of wider concurrent EU policy work on civil protection, counter-terrorism, and civil-military relationships
21 December 2010

COMMISSION COMMUNICATION - Implementation of Article 260 (3) Treaty on the Functioning of the European Union (TFEU)

Letter from David Lidington to the Chair

I am writing to inform the Committee of a recent Commission Communication on the implementation of Article 260(3) TFEU This sets out Commission policy on fining Member States for breaches of EU law. The enclosed Communication is not of a type normally deposited for formal scrutiny, but I am sending it to you because of its wider significance.

The Communication has one clear aim which is to set out how the Commission intends to apply Article 260 (3) TFEU. This is a new Article introduced by the Lisbon Treaty. Under this article, the Commission can request in cases of non-notification of national measures implementing directives that the Court of Justice

impose a fine on a Member State on the first occasion that the Commission brings the matter before the Court. This means the possibility of fines in relation to non-notification of transposition of directives arises significantly earlier and without the Commission having to go to the Court of Justice twice as was previously the case.

The Commission sets out its general approach to implementing Article 260 (3) TFEU. It will consider three principles in determining the level of fine that it will seek: the seriousness of the infringement; its duration and the need to ensure that the sanction itself is a deterrent to further infringements.

Article 260(3) TFEU gives the Commission a discretionary power to spec~ the amount of the fine to be paid by a Member State and to seek a lump sum *and/or* penalty payment *·when it deems appropriate-*. In the exercise of this power, the Commission intends to seek fines in all non-notification cases as a matter of principle. This applies to both total and partial failure to notify measures transposing a directive. Partial failure includes where a Member State has failed to notify transposing measures in relation to a part of its territory, as well as where it has
failed to notify transposing measures in relation to a particular obligation under a directive.

In determining the amount of the fine, the Commission has decided that it will be in line with the detailed method set out in an earlier Commission Communication of 13 December 2005. In calculating the duration of the infringement, the Commission will not take into account the period before the Lisbon Treaty came into force (1" December 2009). The Commission intends to seek fines in respect of all current infraction proceedings involving non-notification apart from those that have already been referred to Court.

The main purpose behind Article 260(3) **TFEU** is to make Member States transpose directives in good time, an aim which the Government supports.
10 January 2011

Letter from the Chair to David Lidington

The Committee has asked me to thank you for your letter of 11 January on the above-mentioned topic. The Communication was not in fact enclosed with it, but was subsequently forwarded by your officials.

The Committee was grateful for sight of the Communication and your comments on it.
2 March 2011

Proposal for a Council Directive amending Directive 2003/109/EC concerning the status of third country nationals who are long term residents to include refugees and beneficiaries of subsidiary protection, (Document 10515/07)

Letter from Damien Green to the Chair

I am writing to inform you that, following a vote in the European Parliament on 14 December, the EU Council and European Parliament have now reached political agreement on the above proposal.

The text will be formally adopted once jurist-linguists have translated it into all official languages of the EU. We expect this to happen in the New Year Those Member States which participate in the amendment will need to transpose the amended provisions into their national law two years after it has been adopted.

I enclose a copy of the agreed text. As the UK has not opted in to this measure, and does not participate in Directive 2003/109/EC, the amendment will not affect us.

I also need to clarify a point made in the Home Secretary's Written Ministerial Statement (WMS) to the House following the Justice and Home Affairs Council on 2-3 December 2010. The WMS reports the Belgian Presidency as saying that political agreement on the proposal had already been reached. Although the Presidency did indeed say that, this was inaccurate as the European Parliament had not yet voted on the agreement at that time. I hope this clarifies the position.

21 December 2010

Letter from the Chair to Damien Green

Thank for your letter of 21 December informing us that the European Parliament and Council have reached a political agreement on the above proposal. We note that the UK does not participate in the 2003 Directive and that the changes agreed in the amending Directive will therefore have no effect in the UK.

We also thank you for drawing our attention to an inaccuracy contained in the Home Secretary's Written Ministerial Statement of 9 December 2010 and for clarifying the date on which political agreement was reached.
19 January 2011

PROPOSED DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on attacks against information systems, repealing Framework Decision *2005/222/JHA*

Letter from James Brokenshire to the Chair

I am writing to inform you that the Government has decided that the UK should opt in to this Directive.

I am grateful for the comments made by your Committee in y10ur report of 3 November 2010 on the Explanatory Memorandum relating to this Directive. I note that you have retained the draft Directive under scrutiny. I will ensure that the concerns raised in your report are reflected in the negotiating mandate for the UK and I will keep you informed of the progress of negotiations.
31 January 2011

Letter from the Chair to David Lidington

Follow-up to the evidence session on 27 April and additional scrutiny matters

Thank you, first of all, for giving evidence to the Committee. It was a useful occasion on which we felt we covered good ground.

During the course of your evidence, however, we were struck by a fundamental misconception on your part about when the Committee should be informed of a forthcoming Council Decision with a view to scrutiny being waived or lifted. This misconception may lie at the heart of the scrutiny breach on the draft Regulation on control of the Commission's implementing powers. As you know, political agreement was reached in the Council on 1 December and it was subsequently adopted by the Council on 14 February. In answer to a question you said:
"Political agreement was reached at the GAC on the regulation text, but of course parliamentary scrutiny bites upon formal Government assent to the particular instrument, which did not take place until 2011."
And to a further question: "It is not by any means infrequent under any Government that a Government reaches political agreement with its partners on something. It is the final text that goes for formal parliamentary scrutiny, with the results of that scrutiny then helping to determine what the Government does, or is able to do, when it comes to the formal decision that takes place at a subsequent European [*sic*] Council meeting."
It is in fact prior to political agreement that the Scrutiny Committees' views should be canvassed with a view to scrutiny being temporarily waived or permanently lifted. This is because the scope for meaningful scrutiny, by which is meant the Committees' views having an influence on the Government, is reduced to precious little once political agreement is reached. You gave the reason for this yourself:

"I think the chances of other countries being willing to abandon a deal that all had accepted as a sensible compromise back in December would be minimal".

We were surprised you did not understand this. It is critical that you, as well as your officials, are aware of it from now on.

We also look forward to receiving the report on the scrutiny breach you agreed to provide.
This letter serves two further purposes. Firstly, in a letter of 19 April you wrote to update the Committee on the Common Understanding on the Delegation of Legislative Power to the Commission, which has been agreed by the three principal EU institutions. In the letter, you said "The Common Understanding is not legally binding. It does not formally require parliamentary scrutiny." The first statement is correct, the second is not. The Common Understanding was presented by the European Parliament to the Council, and so falls within the Committee's current Standing Order, paragraph (v) of which covers European documents published by one institution for submission to another that do not relate exclusively to legislation. The same wording will need to be included when the standing order is revised. For documents falling in this category, the better course of action would be informal contact with the Committee's staff to enquire whether it should be deposited. Many we would regard as insufficiently legally or politically important to merit depositing; the Common Understanding, however, should have been deposited. I would be grateful if you could confirm that you will adopt this practice for these types of document for the future.

Secondly, as you will know the Commission has significant powers to adopt implementing and delegated acts under the TFEU. Exercise of these powers is invariably conditional upon an enabling provision in the superior legislation. We think that it would be sensible that, when EU legislation contains an enabling provision, this should be highlighted under a separate heading as a matter of course in the Explanatory Memorandum. This would clearly signal to the Scrutiny Committees when a European document proposes to delegate powers to the Commission; it may also help to focus attention on this issue in the Department concerned. We would be grateful for your views on this proposal.
11 May 2011

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON PREVENTING AND COMBATING TRAFFICKING IN HUMAN BEINGS, AND PROTECTING VICTIMS, REPLACING FRAMEWORK DECISION 2002/629/JHA

Letter from Damian Green to the Chair

I am writing to you with the revised text of the EU Directive on Human Trafficking, to highlight to you the principal changes that have been made to the text since you last saw it in June and to seek your views on the revised text.

The text of the Directive, which is enclosed with this letter, is due to be adopted by other Member States at JHA Council on 21 March; The Government intends to make a decision on the Directive in February. We would, therefore, seek your views on the revised Directive text by 21 February. I appreciate that this is a rapid timescale; however your views are important to the Government's decision.

This does, of course, mean that we are seeking your views on a text that has yet to be adopted. Whilst there will be some linguistic changes made to the text as a result of the forthcoming translation of the text, there will be no changes of substance made to the text between now and the date of adoption. We will of course be monitoring changes to the text that may arise during translation, and will notify you of any points of concern.

I have outlined below the principal changes to the Directive text since it has been through negotiations:
Article 6a is a new Article that requires Member States to ensure competent authorities are entitled to seize and confiscate items used to commit trafficking offences and the proceeds from trafficking offences.
Article 10 is about providing assistance and support to victims of trafficking. Part (3) has been changed. It requires that Member States ensure that assistance and support for victims is not made conditional on the victim's willingness to act as a witness during the investigation, prosecution and trial.

Article 13 seeks to ensure that the necessary support and assistance measures are provided for child victims of trafficking. Part (1a) is new and, like Article 14, requires Member States to appoint a guardian or representative for the child victim of trafficking where the child's parents or holders of parental responsibility cannot represent the child due to a conflict of interest. Article 14 requires, in accordance with the role of children in the relevant justice system, that competent authorities in Member States appoint a special representative for child victims of trafficking in criminal investigations and proceedings when those with parental responsibility are precluded from representing the child. Part (1 a) is new and provides for child victims' free legal counselling and free legal representation (unless they have sufficient financial resources).

Article 14a is new and is about the assistance, support and protection for unaccompanied child victims of trafficking. It requires Member States to take account of the personal and special circumstances of each unaccompanied chid victim, to find a durable solution for the child and to appoint a representative for the child when the child is unaccompanied.

Article 14b is new and is about compensation to victims. It asks Member States to ensure that trafficking victims have access to existing compensation schemes for victims of violent intentional crimes.

Article 16a is new and requires Member States to supply a European Anti-Trafficking Coordinator (ATC) with information to facilitate a report published by the Commission every two years on progress made in the fight against trafficking.

Article 17 is a measure providing for the replacement of the 2002 Framework Decision by the Directive for those Member States who participate in the Directive.

Articles not listed above remain broadly unchanged from the June version of the Directive text, as per the Explanatory Memorandum 8157/10 published on 25 May.

If there are any specific points which require an answer to assist you in giving me your views, I would be very glad to address these.
7 February 2011

Letter from the Chair to Damian Green

Thank you for your letter of 7 February seeking the Committee‘s views on a revised text of a proposed EU Directive on human trafficking by 21 February. You say that the Government intends to ―make a decision on the Directive in February and that the Committee‘s views are important to the Government‘s decision.

Naturally, we agree that the views of this Committee on whether or not the UK should exercise its right to opt into a Title V measure are important and, for that reason, we expect to be given sufficient time to scrutinise the Government‘s position thoroughly and effectively.

You tell us that you expect the draft Directive to be adopted at the Justice and Home Affairs Council on 21 March. Article 4 of Protocol 21 to the EU Treaties provides that the UK may ―at any time after the adoption of a measure by the Council pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union notify its intention to the Council and to the Commission that it wishes to accept that measure. 21 March is therefore the earliest date on which the Government, formally, can notify the Commission and Council of its intention to accept a Title V measure.

You say that a decision is imminent, but your letter does not give any indication of the Government‘s view on the revised draft Directive as a whole or provide any analysis of the legal, policy and financial implications of the changes made during negotiations to the Commission‘s original proposal. Nor do you explain what effect, if any, these changes are likely to have in persuading the Government to consider reversing its original decision not to opt into the Directive.

I should therefore be grateful if you would arrange for the revised draft Directive to be deposited for scrutiny

and provide an Explanatory Memorandum which assesses the legal, policy and financial implications of the revised proposal and sets out the Government's position on the benefits and disadvantages of opting in.

We note that a decision to opt into a Title V measure after its adoption, under Article 4 of Protocol 21, is not subject to the same three month time limit required for opt-in decisions based on Article 3 of the Protocol. While the Committee would expect to be able to complete its scrutiny within a minimum of eight weeks from receipt of the information requested, this will, of course, depend on how quickly you are able to respond to any issues we raise.
16 February 2011

UK CONNECTION TO THE SECOND GENERATION SCHENGEN INFORMATION SYSTEM (SIS II)

Letter from James Brokenshire to the Chair

I am writing to provide an update on the UK's progress towards developing its own SIS II system and on our connection date to the central EU system in light of the Commission's revised operational timetable, which was declared at the June 2010 Justice and Home Affairs Council.

I would have liked to have provided you with an earlier update. However, the UK's SIS II Programme has been the subject of a Major Project Review conducted by HM Treasury and the Office for Government Commerce and we wished to consider this, the delay to the central system and the outcome of the Home Office's spending review settlement before informing you of our position.

The Major Project Review assessed that the programme is in a good position to deliver its objectives but in the light of the announcement of the delay to the central system, it recommended that the UK's connection date be moved back until 2015. This would mitigate against the risk of there being any further delay to the central system or of one of the migrating Member States not being ready to connect at the go live date and would also allow us to realise savings of £19m by the end of the next spending review period. We have decided to accept that recommendation. In reality a UK go live date of 2015 means that we will need to connect for testing purposes in 2014, shortly after the central system is due to be ready and the migrating Member States will have bedded down their new systems.

A further milestone test on the central SIS II system is due to be completed by mid 2012. We will provide you with an update on the outcome and consequences of this second milestone test at the appropriate time.

This measure falls within those subject to the transitional arrangements in Protocol no.36 to the Treaty on the European Union and the Treaty on the Functioning of the European Union, where the UK must decide in 2014 whether to accept the extension of ECJ jurisdiction to all acts of the Union in the field of police and judicial co-operation in criminal matters adopted before the entry into force of the Lisbon Treaty. That decision will be some time away and I hope to be able to update you in due course.
7 February 2011

Letter from the Chair to James Brokenshire

Thank you for your letter of 7 February informing the Committee of the reasons for the delay in the timetable envisaged for connecting the UK's national SIS II system to the central SIS II system.

You say that moving the UK's connection date back to 2015 should ensure that other Member States migrating to SIS II ―will have bedded down their new systems.‖ We note that this will only be the case if they meet their commitments to connect to SIS II at the appointed time.

We note that there will be a further milestone test on the central SIS II system in the middle of 2012. We

would welcome a comprehensive update on the outcome of that test, including a clear indication of the feasibility of making SIS II fully operational by early 2013 (as is currently envisaged) and setting out the legal and practical consequences for the UK if delays in implementing the UK's SIS II programme prevent the UK from participating in SIS II from the outset.
14 February 2011

UNITED KINGDOM IMPLEMENTATION OF THE PRÜM COUNCIL DECISIONS

Letter from James Brokenshire to the Chair

I am writing to update you on the Government's plans for implementing the Prüm Council Decisions and that we will not be able to implement Prüm in full before August 2011.

Full implementation of Prüm is inevitably complex, covering as it does DNA, fingerprints and Vehicle Registration Data, and implementation will inevitably take a significant period of time. We will also need to make sure that the way in which we implement Prüm is compatible with this Government's focus on civil liberties. For example, we need to bring our fingerprint and DNA retention policy in line with the Coalition Commitment to adopt the protections of the Scottish model. We will be bringing forward detailed proposals for the retention of DNA and fingerprints in a Protection of Freedoms Bill very soon. We think it important to carry out this preparatory work before looking towards exchange with other EU Member States.

Secondly, like all of Government, the Home Office has a very tight Spending Review settlement for 2011-2015. Because of this, we have had to consider very carefully how we prioritise our resources across the department's business. Early work to identify the cost of meeting our Treaty obligations suggests that we will not be able to afford full implementation of all the Prüm requirements within this Spending Review period. Within this, we expect work to concentrate on the Vehicle Registration Data and DNA elements of Prüm later in the 2011-2015 period which we hope will go some way towards meeting our implementation obligations. Our intention is to apply for EU funding to assist with this. I will keep the Committee informed of any future developments on this matter.

The Prüm Council Decisions fall within those subject to the transitional arrangements in Protocol no.36 to the Treaty on the European Union and the Treaty on the Functioning of the European Union, where the UK must decide in 2014 whether to accept the extension of ECJ jurisdiction to all acts of the Union in the field of police and judicial co-operation in criminal matters adopted before entry into force of the Lisbon Treaty. That decision will be some time away and I hope to be able to update you in due course.
7 February 2011

Letter from the Chair to James Brokenshire

Thank you for your letter of 7 February informing the Committee of the reasons for the delay in implementing two Council Decisions which seek to give effect, within the EU, to a number of obligations contained in the Prùm Treaty 2005 which are intended to strengthen cross-border cooperation on terrorism and crime.

You explain that the Council Decisions are subject to the transitional provisions contained in Protocol 36 to the EU Treaties. We understand this to mean that the Commission has no power to bring infringement proceedings against the UK once the deadline for implementing the Decisions has passed.

We note, however, that the UK remains at risk of infringement proceedings because Article 36(4) of Council Decision 2008/615/JHA requires the Commission to report on the implementation of the Decision by 28 July 2012 and contemplates that the Commission may, at the same time, put forward ―such proposals as it deems appropriate for any further development.‖ If any such proposals to amend the Council Decisions are made and agreed within the five-year transitional period provided under Protocol 36, and the UK decides to opt into the amended Decisions, then any failure by the UK to implement in full its obligations would expose it to the risk of infraction and a possible fine.

In light of that risk, we welcome your undertaking to update the Committee in due course.
16 February 2011

COUNCIL CONCLUSIONS ON THE EUROPEAN COMMISSION'S COMMUNICATION ON INTERNAL SECURITY

Letter from James Brokenshire to the Chair

I am writing to inform you that the Justice and Home Affairs Council on 24-25 February will be asked to adopt Council Conclusions on European Union document (No. *16797/10),* Commission Communication on the EU Internal Security Strategy in Action: Five steps towards a more secure Europe. I am aware that the European Scrutiny Committee maintains this document under scrutiny pending the debate on 2 March at which I shall represent the Government. The text is marked "Limite" and is being provided in confidence under the arrangements agreed last year for sharing these texts with the Committees.

I attach for your information the latest draft of the Conclusions which remain under negotiation in the Council. We have already secured several amendments to clarify that, whilst we support the overarching priorities in the Communication, we will consider specific proposals as they are brought forward. Specifically, we have secured changes that: reflect the need to strike an appropriate balance between prevention and dealing with the effects of security threats; make clear that the Council will consider specific proposals as they come forward; replace references to "deepening" the area of freedom, security and justice with "further strengthening"; and address the important issue of ensuring that membership at COSI reflects the operational focus of our work.

We are also seeking changes to the latest text, including removal of specific references to common foreign and security and defence policy in relation to the external aspects of EU security whilst still acknowledging the importance of working with third countries. Provided these amendments are made and other textual changes are consistent with the views the Government has expressed, we will want to be in a position to agree the Conclusions at the Council.

I believe that blocking agreement would harm relations with other Member States, especially the Hungarian Presidency, as well as the Commission. It may also jeopardise the amendments we have secured. Given the ongoing scrutiny of the Communication I considered it appropriate to inform you of the current situation. The debate on 28 February will of course provide an opportunity for any questions arising from the conclusions to be addressed.
7 February 2011

11531/08 - PROPOSAL FOR A COUNCIL DIRECTIVE ON IMPLEMENTING THE PRINCIPLE OF EQUAL TREATMENT BETWEEN PERSONS IRRESPECTIVE OF RELIGION OR BELIEF, DISABILITY, AGE OR SEXUAL ORIENTATION

Letter from Lynne Featherstone to the Chair

I am writing to update you on progress on the Equal Treatment Directive that is currently being negotiated in Council. This Directive seeks to extend protection from discrimination to the grounds of age, disability, sexual orientation and religion or belief in the provision of goods and services.

Developments under the Spanish Presidency (January to June 2010)

The June 2010 EPSCO Council considered a progress report from the Spanish Presidency. This progress report set out the work that the Council had undertaken during the Spanish Presidency and the issues that were outstanding The report particularly drew attention to amendments made to the text to reflect the Treaty on the

Functioning of the European Union; the work undertaken to reflect in the text a better description of the concept of discrimination; efforts to clarify the scope of the Directive in Article 3; attempts to spell out the disability provisions more precisely; the clarification of the provisions regarding legitimate differences of treatment; and adjustments to the implementation timetable in Article 15.

The outstanding issues that are listed are: the need for further discussion on the scope of the Directive to ensure that *the division of competences* is *adequately reflected;* the need for further work to understand and specify the requirements imposed by the disability provisions; the need to ensure that the implementation timetable is reasonable considering the requirements imposed; the need to ensure that the text provides the required level of legal certainty; and *various other issues including clarity on* some *other concepts.*

The update concluded that significant progress was made under the Spanish Presidency, but that there was the need for extensive further work on the proposal.

Developments under the Belgian Presidency (July to December 2010)

Negotiations continued under the Belgian Presidency though only two issues were considered - the nature of the *financial* services *provisions and how the Directive should deal with housing.* The Presidency tabled new text for these areas following discussion by member states.

A progress was presented to the December 2010 EPSCO Council by the Belgian Presidency. This set out the progress made as above and also listed the outstanding issues not discussed under the Belgian Presidency. These were as follows: the division of competences, the overall scope and subsidiary; the disability provisions in general; the implementation calendar; legal certainty in the Directive as a whole; and other issues.

The report concluded that while significant progress had been made under the Belgian Presidency there was a clear need for extensive further work on the proposal.

There is still disagreement among member states on a number of issues, including such significant issues as how to capture the *proper scope* of the Directive. There are also two member states that remain opposed outright to this Directive. Given that there is so much work that remains to be done, and that unanimity is required in Council, the Government thinks there is minimal potential for agreeing the Directive in the near future.

Prospects for the Hungarian Presidency

We understand that the Hungarians are not proposing to give this dossier a high priority, and therefore do not expect much progress. We anticipate a progress report to the June EPSCO.

The UK retains its general and parliamentary scrutiny reservations on the text.
17 FEB 2011

Letter from the Chair to Lynne Featherstone

Thank you for your letter of 17 February.

We note that progress has been slow and that a number of important issues remain outstanding. I should be grateful if you would provide the Committee with a further progress report in June, or sooner if there any new developments to report.
9 March 2011

THE COMMISSION REPORT ON THE IMPLEMENTATION OF The COUNCIL CONCLUSIONS ON 29 MEASURES FOR REINFORCING THE PROTECTION OF THE EXTERNAL BORDERS AND COMBATING ILLEGAL IMMIGRATION.

Letter from Damian Green to the Chair

I am writing to update you on the Commission report on the implementation of the Council Conclusions on 29 measures for reinforcing the protection of the external borders and combating illegal immigration.

The Council Conclusions were agreed in February 2010 as a response to French calls for an **EU** 'crisis summit' following the arrival of 124 Kurdish migrants from Syria on Corsica in January 2010.

The Conclusions call for the reinforcement of the capabilities of Frontex (including further developing joint return operations and flights), closer Member State cooperation on surveillance (particularly through EUROSU the European Surveillance System), and more engagement and practical action on migration with third countries, especially Libya and Turkey.

Although we are excluded from full participation in Frontex on 'Schengen building' grounds, we strongly support its work to co-ordinate the efforts of Member States to raise standards of border management, and recognise the key role it plays in protecting the external borders of the EU. We are keen to continue our co-operation and involvement in Frontex, and participate in a number of Frontex activities to strengthen the external Schengen borders.

Several measures in the Conclusions are ongoing initiatives that are a continuation of existing programmes.

These include: developing the role of the European Asylum Support Office (EASO); promoting practical cooperation and capacity building; systematic implementation of the Global Approach to Migration (i.e. upstream work with third countries); and further developing the networks of Immigration Liaison Officers (ILOs).

Five of the measures are being taken forward by the Standing Committee Operational Cooperation on Internal Security (COSI). These five measures deal with:
• Frontex Working Arrangements with third countries sharing common goals with the EU regarding border security (in particular, accession and candidate countries, and neighbouring third countries) (measure4).
• the collection, processing and systematic exchange of relevant information between Frontex, other EU Agencies and Member Slat s (measure 6);
• the development of the European Surveillance System (EUROSUR), which will establish a mechanism for Member States' authorities to share operational information related to border surveillance and for cooperation with each other and with Frontex at tactical, operation and strategic level (measure 12);
• the exchange of information on illegal immigration, trafficking in human beings and falsification of documents (measure 16); and
• solidarity and the integrated management of external borders by Member States - in particular the European Patrol Network (EPN) which co-ordinates Member States' maritime and surveillance activity along the southern and eastern maritime borders of the EU (measure 17).

We are broadly supportive of the initiatives within the report and are actively involved in the relevant working groups. I updated your Committee on the latest iteration of the text to amend the Frontex Regulation and the ILO Network Regulation by letters on 21 February and 1 March, and I intend to update you shortly on the EU Turkey Readmission Agreement, the EU Belarus Readmission Agreement and a Commission Communication on the evaluation of Readmission Agreements. In general, we would prefer to see the conclusion of existing readmission agreement mandates before opening new ones. Measure 25 in the report refers to dialogue with Libya. However, the overarching EU-Libya Framework Agreement, which drives this practical cooperation dialogue, has been suspended following the instability in Libya. We will seek to update you on progress with individual measures currently under scrutiny as developments occur.
15 March 2011

Letter from the Chair to Damian Green

Thank you for your letter of 15 March enclosing a Commission staff working document describing progress made in implementing measures set out in Conclusions adopted by the Justice and Home Affairs Council in

February 2010 on protecting the EU's external borders and combating illegal immigration.

The document provides a useful snapshot of the wide range of activity undertaken at ED level, particularly through FRONTEX, to improve security at the ED's external borders and support greater cooperation and coordination between Member States. We are grateful to you for providing the information.
23 March 2011

EU proposal for a mandate to negotiate an EU Readmission Agreement with Belarus.

Letter from Damian Green to the Chair

I am writing to advise you of our decision not to opt into negotiating mandate for the proposed EU Readmission Agreement with Belarus.

You will be aware that EU Readmission Agreements provide for reciprocal administrative arrangements to facilitate the return and transit of persons who no longer have a legal basis to stay in EU Member States.

The UK has to date opted into all 13 EU Readmission Agreements which are in force. These agreements are with Russia, Sri Lanka, Hong Kong, Macau, Ukraine, Albania, Former Yugoslav Republic of Macedonia, Serbia, Montenegro, Bosnia-Herzegovina, Moldova, Georgia and Pakistan.

However, in this case we did not believe that the proposed agreement would deliver clear benefits for the UK. The number of illegal migrants removed or deported to Belarus is very low. Moreover, the UK Border Agency already enjoys good cooperation with officials there and we do not have any operational problems with returns to Belarus which a Readmission Agreement
would solve.

There is of course the opportunity to participate in the Belarus Agreement later on when it gets to the signature and conclusion stages and we will inform the Committee further then with customary Explanatory Memoranda. We can also seek to participate in the Agreement post adoption.
28 March 2011

Letter from the Chair to Damian Green

Thank you for your letter of 28 March informing us that the Government has decided not to opt into the proposed negotiating mandate for an ED Readmission Agreement with Belarus.

At our meeting last week, we considered a Commission Communication evaluating EU Readmission Agreements and recommending changes to future EU readmission policy. Our Report raised a number of questions concerning the Commission's recommendations as well as the Government's views on the "added value" of Readmission Agreements concluded at EU level rather than bilaterally. We look forward to receiving your response in due course.
30 March 2011

Draft Regulation amending Council Regulation (EC) No *377/2004* on the creation of an immigration liaison officers' network.

Letter from Damian Green to the Chair

Thank you for your letter of 10 March concerning this draft Regulation and wider Schengen issues. I am grateful to you for allowing me additional time to address what are some complex issues.

Your first question was about the Government's position on the draft Regulation. You asked for a copy of the Declaration the UK has made on the Regulation. I have attached this to my letter.

This Declaration is unilateral and therefore not binding on the Council or the Commission, so its effect will be limited. However, it puts down a clear marker of the UK's position in relation to this and any future measures that are partly Schengen-building and partly not. It should also be recalled that this is a measure in which the UK wished to participate but was keen to ensure that the nature of its participation was properly recorded. Should the application of Protocols 19 and 21 to the Treaties in respect of the UK on a particular measure be challenged in future, the UK would refer to this Declaration as evidence that it has not accepted the view of the Council that its rights under Protocol 21 do not apply in this particular situation. The fact that Ireland made a Declaration in similar terms adds weight to our position.

Your next question was about how the Government determines whether a Title V EU legislative act is deemed to build on the Schengen *acquis.* The Government assesses each measure on a case-by-case basis, looking at the aim and content with a view to determining whether the measure can be said to build on the acquis. That is no different to the means which are used to determine the legal base of any EU instrument. We take that approach on the following basis:

- Article 5(1) of the Schengen Protocol says *"Proposals and initiatives to build upon the Schengen acquis shall be subject to the relevant provisions* of *the Treaties".* So, Schengen-building measures must have a legal basis in the Treaties and must comply with the provisions of the Treaties, just like any other legislative proposal. Indeed, Article 2 of the original pre-Lisbon Schengen Protocol required the Council to allocate a legal basis in the Treaties for each provision which forms part of the acquis. This it did in Council Decisions 1999/435/EC (concerning the
definition of the Schengen acquis for the purpose of determining, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on European Union, the legal basis for each of the provisions or decisions which constitute the acquis) and
1999/436/EC (determining, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on European Union, the legal basis for each of the provisions or decisions which constitute the Schengen acquis).

- Article 5(1) raises the question of whether a measure can be considered to be 'building upon' the acquis (an important question for the UK especially given our opt-in / opt-out arrangements on Title V and Schengen).

- In Case C-77/05 *United Kingdom v Council* (the Border Agency case), the Court of Justice rejected the argument that Article 5 should be constructed narrowly as applying only to measures which are inextricably linked to the acquis. Rather, the Court said, the questions of whether an
instrument is a Schengen-building measure is to be resolved by the same test which is applicable to the choice of an instruments legal base: *"Consequently, and by analogy with what applies in relation to the choice* of *the legal basis* of a *Community act, it must be concluded that in* a *situation such* as *that at issue in the present case the classification* of a *Community act* as a *proposal or initiative to build upon the Schengen acquis within the meaning* of *the first subparagraph* of *Article* 5(1) of *the Schengen Protocol must rest on objective factors which are amenable to judicial review, including in particular the aim and the content* of *the act (see Case C-300/89 Commission v Council ... ('Titanium dioxide?, paragraph 10; Case* C-176/03 *Commission v Council ... paragraph 45; and Case C-440/05 Commission v Council ... paragraph* 61)" (paragraph 77 of the judgment).

- In Case C-482/08 *United Kingdom v Council* (the VIS case), the Court of Justice affirmed what it had said in the Border Agency case. Your final question concerned the criteria and analysis the Government applies for determining the correct basis for UK participation in Title V measures and how these might differ from those used by the European Institutions. This is a complex area covering a broad range of issues on which I am aware there is extensive correspondence between Departments and your Committee on individual points relating to the interpretation of the Protocol. The Government will write separately seeking to bring these issues together as soon as possible.
1st April 2011

Letter from the Chair to Damian Green

Thank you for your letter of 1 April enclosing a copy of the Declaration made by the UK at the time of adoption of the draft Regulation.

We are grateful for your explanation of how the Government determines whether an EU measure which has a legal base in Title V of Part Three of the Treaty on the Functioning of the European Union (TFEU) is deemed to build on the Schengen *acquis,* and for highlighting the relevant case law of the Court of Justice.

As your letter notes, we are keen to ascertain how and why the Council and Commission, on the one hand, and the UK (and possibly Ireland) on the other, appear to apply the case law in such a way as to reach differing conclusions on whether a particular Title V measure is wholly or partly Schengen-building and on whether the UK's opt-in applies. We understand that you intend to
address this issue in a separate letter and look forward to receiving it with great interest.
27 April 2011

Proposal for a Directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection (recast Procedures Directive) (Document 14959/09 + ADD1, ADD2, ADD3, ADD4)

Letter from Damian Green to the Chair

Outcome of the European Parliament's First Reading (Document 8526/11)

I am writing to update you on developments in the negotiations for a recast Directive on minimum standards on procedures for granting and withdrawing international protection. As you will know the UK has not opted in to the negotiations on this proposal. Progress in Council has been slow, with many Member States registering strong objections to many of the changes proposed by the European Commission. The level of objections has led to the European Commission announcing that it will present a new revised proposal in order to facilitate discussions. This is likely to be presented in early June, along with a similarly revised proposal to recast the Directive laying down minimum standards for the reception of asylum seekers. As you are aware the Government does not agree that further legislative measures offer the best way forward: in our view any identified gaps in the implementation of existing obligations are better addressed through the delivery of practical help to build capacity on the
ground, as foreseen in the remit of the European Asylum Support Office (EASO).

The European Parliament has continued its consideration of the proposal on Asylum Procedures in parallel, culminating in a debate on its First Reading position, the detail of which is set out in Document 8526/11. The Parliament adopted 97 amendments, many of which support the Commission's stated aim of improving the quality of initial (first instance) procedures and harmonising towards higher standards that protect the rights of asylum seekers. For example the Parliament suggests that Member States set a minimum time limit of 45 working days during which an applicant may exercise their right to an effective remedy and that a minimum time limit of 30 working days shall apply to applicants in an accelerated procedure (Amendment 93). To put this in context the current time limits applicable to the lodging of asylum appeals in the UK are 10 working days for the normal procedure and 2 working days for the accelerated procedure ("Detained Fast Track").

The European Parliament Rapporteur, Sylvie Guillaume (Progressive Alliance of Socialists and Democrats (S&D), France), said that the Report should send a strong signal to the Commission and the Council. . It is worth noting that following explicit advice from the Commission the European Parliament finalised its First Reading position at this time specifically in order to maximise its influence over the Commission's revised proposal. The Rapporteur also expressed her regret that discussions were blocked in Council. Cecilia Malmstrom, the European Commissioner for Home Affairs, attended the debate. She indicated that the vote of the Parliament would feed into the revised proposal that the Commission will present in the near future in order to give a boost to the stalled negotiations in Council. The latest indications from Brussels are that the

Commission will present its proposal in June, when it will be deposited for scrutiny by your Committee in the usual way, followed by the submission of an Explanatory Memorandum.
10 MAY 2011

Letter from the Chair to Damian Green

Thank you for your letter of 10 May updating us on developments in negotiations for a recast Procedures Directive. We note that you expect the Commission to present a new, revised proposal for a recast Directive in June.

In our last Report on the Commission's 2009 proposal (HC 428-ii (2010–11), chapter 13 (15 September 2010)), we noted that the recast Directive, if adopted, would repeal and replace the 2005 Procedures Directive in which the UK participates. In light of the previous Government's decision not to opt into the Commission's proposed recast, we asked you to explain whether the repeal of the 2005 Directive would only take effect in those Member States participating in the adoption of the recast Directive, or whether it would also take effect in the UK, thus releasing the UK from its obligations under the 2005 Directive. If the latter, the Committee also asked what consequences the repeal of the 2005 Directive would have for the UK's asylum system.

We note that the recently agreed Directive on preventing and combating trafficking in human beings (which the Government intends to opt into) suggests that the former solution is the more likely one. It provides that the Directive only replaces an earlier Framework Decision for those Member States participating in the Directive. However, the situation is not entirely comparable, as the UK is highly unlikely to opt into any new Commission proposal to recast the 2005 Procedures Directive. It will therefore be important to know whether the UK will remain bound by the obligations it accepted in agreeing the 2005 Directive. I therefore look forward to receiving your response to the questions raised in our last Report once the Commission has published its revised proposal for a recast Directive in June.
18 May 2011

Regulation establishing an evaluation mechanism to verify the application of the Schengen acquis - *16664/10*

Letter from James Brokenshire to the Chair

Thank you for your report of 2 March, in which you asked for progress reports on the Schengen Evaluation Mechanism.

Since 4 April, the Schengen Evaluation Mechanism (SEM) has been tabled for discussion at a number of technical working group meetings. Examination of the actual mechanism process has been delayed as the focus for Member States is the legal base chosen for this proposal by the Commission. Member States have now submitted their views on the legal base where the majority have indicated support for a move to Article 70.

This includes the UK. There are a number of reasons for taking this position. Article 70 covers the evaluation of all EU policies, including all aspects of Schengen: policing and judicial co-operation as well as internal border controls. This also concurs with your view that Article *77(2) (e)* should not be used as a 'catch-all' legal base by the Commission. For instruments with Schengen content, Article 70 also provides the easiest legal solution to UK participation. Article 3(1) 3rd sentence of Protocol 21 explicitly provides that measures adopted pursuant to Article 70 TFEU shall lay down the conditions for the participation of the United Kingdom in the evaluations concerning the areas covered by Title V of Part III of that Treaty. This is in line with Article 1(c) (i) of Council Decisions *2000/365* and *2002/1921* on UK partial participation in Schengen. This would avoid the need to find alternative and more complicated solutions to ensure UK participation such as through an 'IT Management Agency' solution or split instruments.

The UK appreciates that the Treaties give a reduced role to the European Parliament (EP) under Article 70, as compared to Article 77. We believe that the EP's role flows from the correct legal base and a desire to give the EP an enhanced role should not influence the choice of correct legal base. While they will lose the right to co-decision on the Regulation text, we support wording in the proposal that would ensure their scrutiny role as envisaged within the mechanism process itself.

However, following discussions at the June JHA Council and European Council (in light of events in North Africa) there is an increased focus on strengthening Schengen Governance (including SEM). The next discussion on Schengen reform is expected at the Informal JHA Council on 18 and 19 July.

In particular the June European Council Conclusions ask the Commission to introduce a safeguard mechanism "in order to respond to exceptional circumstances putting the overall functioning of Schengen cooperation at risk, without jeopardising the principle of free movement of persons". Such an EU mechanism should "comprise a series of measures to be applied in a gradual, differentiated and coordinated manner to assist a Member State facing heavy pressure at the external borders" and could "include inspection visits, technical and financial support, as well as assistance, coordination and intervention from Frontex". It could also, as a last resort, include the possibility of exceptional reintroduction of internal border controls in a "truly critical situation where a Member State is no longer able to comply with its obligations under the Schengen rules".

A Commission package of measures is therefore expected from July onwards. There are a range of possible options for how this could be taken forward legislatively. The UK is not directly affected, except on proposals relating to evaluation and inspection. We will of course need to ensure that the package reflects those parts of Schengen in which we do participate, where we need to protect our current partial participation and continue to seek partial participation if we are excluded. The package may include extensive amendments to the current SEM proposal, as well as updates to the Schengen Borders Code and revision of the Schengen Border Guards Handbook. It remains to be seen if this will necessitate withdrawal of the SEM proposal and re-tabling.

Given the legal base issue, the Commission package and possible Commission reworking of the SEM text, we do not expect further discussion on SEM until September under the Polish Presidency. We will update you as soon as there are significant developments.
07 July 2011

Letter from the Chair to James Brokenshire

Thank you for your letter of 7 July which sets out recent developments regarding the Commission's proposal for a draft Regulation to establish a new EU mechanism to verify whether States participating in the Schengen free movement area are applying the Schengen *acquis* correctly. We note that discussions to date have focussed on the legal base and that most Member States, including the UK, would support a change from Article 77(2) (e) to Article 70 TFEU.

You indicate that the Commission is expected to produce a new package of measures in response to the Conclusions adopted by the European Council in June, which suggest that there is a need for a more fundamental reform of the governance of the Schengen area. The Commission's proposal for a draft Regulation may, as a consequence, be withdrawn and replaced by a more ambitious instrument.

In light of this uncertainty, we intend to hold the draft Regulation under scrutiny and look forward to receiving a further update from you once the Commission has published its new package of measures.
13 July 2011

Regulation of the European Parliament and of the Council on establishing an Agency for the operational management of large-scale IT systems in the area of freedom, security and justice. [8151/10]

Letter from James Brokenshire to the Chair

I am writing to inform you that the Regulation on the European Union (EU) IT Agency was adopted by the Council at the General Affairs Council (GAC) on 12 September. I attach the final text on which this decision was taken. I also wish to inform you that the Government voted against the Regulation at the final vote in the Council based on a wider point of principle. I set out an explanation below. I am sorry that I have not been in a position to update you fully until now.

Overall, I am pleased to say that the UK has been successful in achieving its negotiating aims on the substance of the IT Agency Regulation. This includes full UK participation with voting rights on the Management Board of the Agency. This resulted from a legal solution that overcomes our "asymmetric" participation in the Schengen Acquis without drawing us into other elements of Schengen.

There was, however, a separate point of principle which was of concern to the Government in determining its final vote. This resulted from negotiations to secure a deal at First Reading between the Council and the European Parliament. The issue was that the location of the Agency has been specified within the main text of the Regulation - at the request of the European Parliament. While the Government does not have concerns in practice about the chosen location of the Agency (the administrative headquarters will be in Tallinn and the servers will be located in Strasbourg), we were concerned about the point of principle this raised. Typically, the decision on the location of Agencies is not included within the main text of EU legal instruments because they are a matter of common accord between Member States (and not subject to co-decision).

Other Member States initially shared the UK's concern on this point of principle, but to mitigate the risk of precedent-setting, the Council agreed a Declaration at the June Justice and Home Affairs Council to accompany the Regulation stating that the inclusion of the location "in no way constitute[d] a precedent for deciding on the seats of EU agencies in the future". On this basis, a Qualified Majority in Council was formed in favour of agreeing the text for a First Reading in the European Parliament. Despite the Declaration, however, the Government wished to register its displeasure at the inclusion of the location in the main body of Regulation. That is why, given this
point of principle, we felt it necessary to vote against the final text at the GAC. We have also explained our position in a short accompanying Minute Statement, which reads:

The United Kingdom (UK) is voting against the Regulation of the European Parliament and of the Council on establishing an Agency for the operational management of large-scale IT systems in the area of freedom security and justice owing to the inclusion of Article 10(4), which specifies the seat of the Agency within the main text of Regulation.

Through its vote, the UK reaffirms its view and reiterates the position set out in the Council declaration that:
• The location of EU Agencies should continue to be made by common accord of the Representatives of the Governments of the Member States; and
• The inclusion of this text does in no way constitute a precedent for deciding on the seats of EU Agencies in the future.

Given that the Government was content with the Regulation in all other respects, it is disappointing that we were left unable to vote positively. However, it was important to record our disapproval on this point of principle and to reinforce the view that the inclusion of the location in the Regulation did not set a wider precedent.
13 SEP 2011

Letter from the Chair to James Brokenshire

Thank you for your letter of 13 September in which you set out the reason why the Government decided, contrary to expectations, to vote against the Regulation to establish an EU IT Agency at the General Affairs Council on 12 September.

Whilst we welcome the explanation you have provided, we are also somewhat surprised. We note that the Commission's original draft Regulation, proposed in June 2009, as well as later amended drafts, have all included a provision on the seat of the Agency, although the actual location was left blank. If the inclusion of a provision on the seat of the Agency in the body of the draft Regulation constituted "a point of principle" for the Government, we would have expected you to have raised your concerns in the course of scrutiny. We regret that you did not do so in this case.
12 October 2011

Letter from James Brokenshire to the Chair

Thank you for your letter of 12 October on the IT Agency Regulation.

I am sorry that we did not draw to your attention our eventual concerns on the location provision ahead of the final vote on the Regulation.

Throughout the negotiating process our primary concern had always been to secure and maintain the UK's participation in the Regulation in light of the legal complexities posed by the nature of our participation in the Schengen acquis. Although a holding provision was, as you say, included within the legal status article in earlier versions of the text, it was not apparent that this would give us cause for concern until the final phase of the negotiating process, when the Council, European Parliament (EP) and the Commission sought to agree a First Reading deal.

Until the First Reading negotiations, there had been a qualified majority within Council in favour of a mechanism that would secure agreement amongst Member States on the location, but simultaneously preserve the principle that the seats of Agencies should remain a matter for Member States. With that view prevalent in the Council we had not identified the holding provision as a risk.

But the view in Council shifted when it became clear that, in order to conclude the negotiations at First Reading, the Council would need to compromise on this issue with the EP. The EP requested the inclusion of the physical location of the Agency in the final version of the text to agree a deal at First Reading. It was at this stage that, with closer analysis of the implications, we concluded that we needed to take a principled stand, culminating in our vote against the Regulation at the final stage of its adoption.

With the benefit of hindsight, we should have identified the risk that the text could ultimately specify the location of the Agency at an earlier stage. At the time, however, we did not believe there would be a departure from established practice until the First Reading negotiations played out and the qualified majority in Council collapsed.

I am sorry that, on this occasion, we did not identify and highlight this issue to you sooner. We will ensure that future Explanatory Memoranda and correspondence address this issue when it arises.
31 Oct 2011

Letter from the Chair to James Brokenshire

Thank you for your letter of 13 September in which you set out the reason why the Government decided, contrary to expectations, to vote against the Regulation to establish an EU IT Agency at the General Affairs Council on 12 September.

Whilst we welcome the explanation you have provided, we are also somewhat surprised. We note that the Commission's original draft Regulation, proposed in June 2009, as well as later amended drafts, have all included a provision on the seat of the Agency, although the actual location was left blank. If the inclusion of a provision on the seat of the Agency in the body of the draft Regulation constituted "a point of principle" for the Government, we would have expected you to have raised your concerns in the course of scrutiny. We regret that you did not do so in this case
12 October 2011

PROPOSAL FOR A DECISION ON THE EUROPEAN YEAR OF CITIZENS 2013 (13478/11)

Letter from Damian Green to the Chair

Further to my recent Explanatory Memorandum (EM) on the proposal for a decision of the European Parliament and of the Council on the European Year of Citizens 2013, submitted to you on 10 October, I am writing now with my promised update on the Government's proposed approach.

Having completed our consultation across Government we intend to support the legislative proposal. We believe that providing information to make our citizens more aware of the rights and benefits that EU citizenship entails is a good thing. We should ensure that no obstacles are placed in the path of EU citizens who are genuinely entitled to exercise free movement rights.

However, as set out in my EM the proposed European Year of Citizens should take account of citizens' responsibilities as well as their rights. It is important to balance promoting these rights with clear messages on the rules and conditions which apply to their exercise, including on access to benefits. Accurate information should be presented to citizens across Europe, including those who choose not to exercise their right of free movement.

To that end we are seeking the inclusion of language that emphasises how these rights entail responsibilities and duties with regard to other persons, to the human community and to future generations. Other Member States have expressed support for this position.
21 Nov 2011

Letter from the Chair to Damian Green

Thank you for your letter of 21 November informing us of the outcome of your cross-Whitehall consultation on the draft Decision.

We note that the Government intends to support the draft Decision whilst also pressing for the inclusion of language which makes clear that the exercise of EU citizenship rights also entails responsibilities. We understand that other Member States support the Government's position. We would welcome a further update once you have a clearer sense of the language likely to be included in the final text of the Decision.
7 December 2011

Amended Proposal for a Directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection status (Recast) (Document *11207/11)* (Asylum Procedures Directive)

Amended Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of asylum seekers (Recast) (Document *11214(11)* (Reception Conditions Directive)

Letter from Damian Green to the Chair

I am writing to update the Committee on the progress of negotiations for the above recast Directives. You will be aware that the UK decided not to opt in to these Directives.

The Polish Presidency made it clear that working on the proposals forming the second stage of the Common European Asylum System (CEAS) was one of their priorities. The Presidency has worked hard in this area with the Council Working Group completing the first readings of both proposals and discussing various compromise texts. Some discussions have also taken place at the higher working level of the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA).

You will recall our concerns about proposals in Article 15 of the Reception Conditions recast that required Member States to grant access to the labour market for asylum seekers after a period of 6 months (with some limited exceptions) compared to 12 months in the Directive in force. This has proved to be a highly

controversial proposal with many Member States taking a similar view to our own, arguing that easing access to the labour market could be a pull factor encouraging unfounded claims for protection made simply to secure a route into national labour markets that would otherwise be unavailable. A minority of Member States have indicated that they could support the 6-month period if it were subject to conditions, for example that it would only apply if an administrative "first instance" decision had not been made or it would not apply if the applicant had failed to cooperate in the asylum procedure.

Similar concerns have been expressed on the proposals on access to material reception conditions (asylum support) in Articles 17-20. In bringing forward its proposal in June the Commission indicated that it had taken into account the reservations held in Council about proposals in the earlier recast referring to equal treatment of asylum seekers compared to nationals and the position of the European Parliament: the Commission proposed that Member States could grant less favourable social welfare assistance to asylum applicants compared to nationals where it is "duly justified" and other levels of support are provided in kind at the same time. We did not believe that the requirement to "duly justify" such differences was necessary or that other proposals concerning the withdrawal or reduction of reception conditions were workable. Other Member States share our views and have challenged the proposal as drafted arguing that it would highlight differences between Member States and that as a result Member States offering higher levels of social welfare would become more attractive to asylum applicants.

The strength of disagreement on both access to the labour market and the provision of material reception conditions led to the issues being discussed at the higher levels of SCIFA at the end of last month (November), but deadlock remains. The incoming Danish Presidency has indicated that it will seek to address these issues at the higher political level in the New Year.

Another contentious area of debate has focussed on the provisions on detention in Articles 8-11 of the Reception Conditions proposal and related references to detention in Article 26 of the proposal on Asylum Procedures. You will recall our assessment that the restrictions on the use of detention proposed by the Commission were unnecessary given the provisions of Article 5(4) of the European Convention on Human Rights that concern an individual's right to challenge the lawfulness of his or her detention before the courts. We were also concerned that these provisions would have a negative impact on the UK Border Agency's ability to operate its Detained Fast Track (DFT) system. The content of these provisions remains under discussion as attempts to reach a compromise continue, but in a positive development the Presidency has accepted our argument that insofar as they are considered necessary any provisions concerning the detention of individuals subject to procedures under the Dublin Regulation should be included in the recast Dublin Regulation. We look forward to considering proposals within the Dublin Regulation in due course.

Turning to the proposals on Asylum Procedures you will recall that we had some concerns around the provisions in Article 6 of the proposal that set down requirements to provide access to the asylum procedure. The Commission proposal was based on seeking to identify three stages within that process where an individual first expresses a desire to make an application, followed by a stage when the application is deemed to have been "made" and finally a stage where the application is "lodged" once all administrative functions are completed. Discussions in the Council Working Group have revealed that there are significant difficulties with this provision as drafted, not only in terms of the conceptual divide into a 3-stage process, but also at the practical level of translation into different languages. Some Member States have noted that in their national language versions of the text there is no difference in the wording used for the proposed stages when an application is considered to be "made" and then "lodged". We have argued that there needs to be consistency between any wording used in this article and that used in both the EURODAC and Dublin Regulations, as there needs to be a clearly defined moment from which participating States' responsibilities to take and transmit fingerprint data to the EURODAC database are triggered.

Although we noted that the proposals concerning the provision of medical reports in Article 18 of the recast were simpler than those contained in the earlier proposal (document 14959/09) we remained concerned about the requirement on Member States to commission reports in certain circumstances. Many Member States have expressed concerns about this article. Various compromises have been proposed, but concerns remain, in particular around the evidential weight to be given to medical reports in the context of the asylum procedure on the basis that there is not necessarily a link between the results of an examination and the grounds for international protection. There have also been concerns expressed that the proposal and some of the suggested

compromises have built opportunities into the procedure that allow for the asylum procedure to be delayed. Finally there are differences of opinion between Member States on whether medical examinations should be conducted at the expense of the applicant or the Member State and if the former applied whether this would unfairly discriminate against those applicants unable to afford the costs.

We were concerned that the provisions in Articles 31 and 46 concerning the examination procedure, unfounded applications and remedies when taken together would restrict the UK Border Agency's use of the DFT procedure and non-suspensive appeals (NSA). Both articles have been the subject of intense debate in the Council Working Groups with many Member States expressing serious and multiple concerns with the proposals, many of which are in line with our own. In the course of the discussions the Commission has indicated that it is unwilling to support some of the suggestions put forward by Member States that seek to reintroduce into Article 31(6) (on accelerated procedures) provisions it proposes to delete from the directive in force, for example those provisions that currently permit acceleration: where the applicant has failed to make an application earlier having had an opportunity to do so; where the applicant has entered the territory unlawfully or prolonged their stay unlawfully and without good reason has not made an application as soon as possible; and where the applicant refuses to comply with an obligation to have their fingerprints taken.

The European Parliament has not so far considered either of the proposals since the Commission re-presented them.

The incoming Danish Presidency has expressed its commitment to work on these proposals in the coming months and we will keep the Committee informed of progress.
19 Dec 2011

Letter from the Chair to Damian Green

Thank you for your helpful letter of 19 December 2011 providing a comprehensive update on the main issues and concerns which have arisen during negotiations on these draft Directives under the Polish Presidency. We note that limited progress appears to have been made.

We welcome your commitment to provide further progress reports as negotiations recommence under the Danish Presidency.
11 January 2012

DRC PARLIAMENTARY AND PRESIDENTIAL ELECTIONS, 28/11/2011

Letter from David Lidington to the Chair

Following the submission of Explanatory Memorandum Documents 33098 and 33099 on 2 September 2011, I am writing to respond to the Committee's request for information on the outcome of the Presidential and National Assembly elections in the Democratic Republic of Congo and their impact on the two EU CSDP missions (EUPOL and EUSEC DRC).

Polling for the presidential and National Assembly elections in DRC started as scheduled on 28 November. It continued for a number of days in some areas due to logistical delays. The DRC electoral commission (CENI) announced provisional results for the Presidential elections on 9 December, and that incumbent President Kabila had won with 48% of the vote. Vital Kamerhe, one of the main candidates, lodged an appeal with the Supreme Court. This appeal was subsequently rejected. The Supreme Court raised no further questions about the election process, and President Kabila was inaugurated on 20 December. The results for the National Assembly elections are scheduled to be announced by CENI on 13 January.

Throughout the process there were a number of irregularities, some serious. Polling itself was largely calm, with good voter turnout. The EU and Carter Center **observation missions made statements welcoming this, but also raising serious concerns about irregularities in the process and incidents of unrest in the fun-up to** polling day. Both these observer missions have stated that the election process lacked credibility, but have not yet made a judgement on whether the overall result should have been different. Other observation missions, such as those of the AU and SADC, gave the elections a clean bill of health.

There were incidents of unrest throughout the electoral period as demonstrators clashed with the Congolese police (PNC) and Republican Guard. Most of these demonstrations were organised by the main opposition party, UDPS. The PNC held primary responsibility for providing security during the elections. EUPOL provided the personnel to deliver training funded by France for PNC public order units. The UN stabilisation mission to DRC (MONUSCO) takes the view that, given its capacity, the PNC performed reasonably well in responding to public order issues. But various commentators, in particular Human Rights Watch, have raised concerns over the security forces (including the Republican Guard) use of excessive force, and attempts to manipulate voters on polling day by ex-CNDP integrated units of the Congolese army (FARDC). Reform of the security forces, to build a democratically accountable, effective and apolitical security sector is one of the long term objectives of the CSDP missions.

The elections caused no serious disruption to the activity of both CSDP missions. The planned strategic reviews of EUPOL in late January or early February, and of EUSEC in April 2012, remain the appropriate time for Member States to consider their future.
11 January 2012

Letter from the Chair to David Lidington

The Committee has asked me to thank you for your letter of 11 January 2012, in which you responded to the Committee's request for your thoughts on what the repercussions might be for EUPOL DRC and/or EUSEC DRC of the outcome of last November's elections; and in particular, once the dust had settled, whether you thought the mandate of each was likely to be further extended, amended or terminated.

You say that the elections caused no serious disruption to the activity of either CSDP mission; and that the planned strategic reviews of EUPOL DRC in late January/early February, and of EUSEC DRC in April, "remain the appropriate time for Member States to consider their future."

In that case, the Committee would be grateful if you would write again then, i.e., in the first instance, after the EUPOL DRC review has been considered, to let the Committee know what action you think should now be taken.
18 January 2012

Implementation of the Prüm Council Decisions

Letter from James Brokenshire to the Chair

I am writing to provide you with a summary of Prüm implementation developments across Member States during 2011. These developments can include extensive testing and evaluation, and formal confirmation of a Member State's compliance through adoption of at least four standard format Council Decision texts (covering DNA, fingerprints, vehicle registration data and full readiness). As you are aware, the Government and your Committee agreed that scrutiny of individual Member States' implementation would not be time or cost effective, as it would total 108 Council Decisions all of a similar format and content, and that the Government would provide an annual update on Member States' progress.

The deadline for implementation by all Member States was, for all three areas, 31 August 2011. This goal proved overambitious, something now accepted by Member States and the Commission. In addition to the legal, technical and financial issues involved in such a large multi layered project, the extensive evaluation and confirmation process at national and EU level has not aided the overall process. We await Danish Presidency views on how this work will be taken forward.

By the end of 2011, only ten Member States have completely implemented Council Decision 2008/615/JHA into national law, while seven have indicated no timeframe at all for the completion of the legal implementation.

Three Council Decisions confirming that Member States are ready to fully launch DNA data exchange were adopted during 2011, meaning that twelve Member States are DNA operational. Even then, not all are connected to each other and testing is ongoing between the Member States concerned. Member States reported that the main implementation problem is of a technical nature and concerns the receiving/installation of automated data exchange software. A further three Member States' evaluation procedures were concluded in 2011 and we expect publication of their Council Decisions confirming compliance in 2012.

One Council Decision on the launch of dactyloscopic data exchange was adopted in 2011, meaning that 9 Member States are fingerprint operational. Again, not all are connected to each other and testing is ongoing between the Member States concerned. Member States reported that the main implementation problem is of a technical nature and concerns the building of the Prüm interface for automated data exchange. Three Member State evaluation procedures were concluded in 2011 but have not been finalised. We expect that their Council Decisions confirming compliance will be tabled in 2012.

Two Council Decisions on the launch of automated vehicle registration data (VRD) exchange were adopted in 2011. The vast majority of Member States are in early stages of work, under evaluation or in testing. Only 9 Member States are fully operational in the field of automated VRD exchange and are connected to each other. One is connected but only providing information and not receiving while their system is rebuilt to comply with Council Decision 2008/615/JHA. Three Member States' evaluation procedures were concluded in 2011 and we expect Council Decisions confirming compliance will be tabled in 2012.

10 January 2012

Draft Directive on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted (recast "Qualification Directive") (Council document 14863/09) (31043)

Letter from Damien Green to the Chair

Letter from the Chair to Damian Green

Thank you for your letter of 18 January informing us that the Council and European Parliament have approved a new, recast Qualification Directive.

We note that the Government does not intend to seek to opt into the recast Directive following its adoption, and we are grateful to you for setting out your reasons.

25 January 2012

16993/11: Proposal for a Council Decision establishing the position to be adopted on behalf of the European Union within the World Trade Organization (WTO) as regards requests under Article IX of the Marrakesh Agreement establishing the World Trade Organization (the WTO Agreement) for granting and/or extending certain waivers

Letter from Edward Davey to the Chair

Thank you for your letter of 11 January regarding the lateness of the Explanatory Memorandum on the above proposal.

I can confirm the scrutiny reserve was in place for both COREPER and the Foreign Affairs Council and that the UK abstained from the vote at both meetings; my apologies for not highlighting this more clearly in my previous letter.

I agree that the delay in submitting the EM in this case was unacceptable. In their defence the team concerned was dealing with an exceptionally high volume of explanatory memoranda on WTO Accessions and related side agreement at very short notice and on this occasion, had to prioritise. Steps are being taken to ensure that there is no delay in future on all explanatory memoranda relating to Trade issues.

Please accept my apologies and assurance that we will make every effort, in future, to adhere to the timetable.

23 January 2012

Letter from the Chair to Edward Davey

Thank you for your letter of 23 January.

We were glad to see that the UK did in fact abstain from the vote at both COREPER and the Foreign Affairs Council, and to learn that steps will be taken to try and avoid the undue delay in submitting an Explanatory Memorandum which occurred in this case. We are content to leave matters on that basis.

25 January 2012

5091/06: Proposal for a council regulation on the indication of the country of origin of certain products imported from third countries

Letter from Edward Davey to the Chair

Although little has happened I thought I should let you have an update on this dossier as at the end of the Polish Presidency.

The Poles arranged three Council Working Group discussions (two in the usual Commercial Questions Group and one in the Customs Union Working Group). The deep division between Member States remains. And while all Member States have expressed a readiness to examine new ideas in order to try to make progress many, including the UK, made clear that any new proposal based on the existing Commission proposal was unlikely to be acceptable.

The dossier now passes to the incoming Danish Presidency to take forward.

16 January 2012

Letter from the Chair to Edward Davey

Thank you for your letter of 16 January, confirming that little progress has been made this dossier, and that it will now pass to the Danish Presidency.

We have noted the position, and would be grateful if you could keep us informed should there be any progress. We would also be glad if you could continue to bear in mind the comments by the last Committee in its Report of 8 February 2006 about the importance of our being alerted in good time if there is any question of the proposal being adopted in its present form.

25 January 2012

EU-SYRIA: FURTHER RESTRICTIVE MEASURES

Letter from David Lidington to the Chair

I am writing with regard to the planned adoption at the 23 January Foreign Affairs Council of a new Council Decision and Implementing Regulation imposing new sanctions against Iran.

We believe it is an urgent priority that the European Union agrees a robust response to continued Iranian defiance of its international obligations, including acting to prevent Iran acquiring the goods needed to develop its nuclear programme and halting the financial flows that fund the programme.

I regret that I find myself in the position of having to agree to the adoption of these measures before your Committee has had an opportunity to scrutinise the documents.

As I write the measures are still subject to intense negotiation, where the UK Representation to the EU is working hard to secure the tough new sanctions against Iran. I will submit Explanatory Memoranda on the documents as soon as the measures have been agreed. The reason I cannot do this sooner is because the working documents are classified, to prevent the risk of asset flight in advance of adoption.

However, I do want to keep you as fully informed as possible on the emerging sanctions package. The measures we hope to agree on 23 January include action against Iran's oil and petrochemical industry and financial sector, both of which are critical to funding Iran's nuclear programme. I expect the European Union to agree:

- **An import ban of Iranian crude oil and petrochemicals**. The Government has been working with international partners to ensure that this measure will not create any unintended consequence for global oil prices or security of supply to the EU. As such, the Decision will allow for prior contracts to allow for a period of months to allow consumers and markets to adjust. And there will be a review of the measure after several months.

- **A ban on the export of key equipment for Iran's petrochemical industry**. This will bolster the existing ban on key equipment for the oil and gas industry.

- **A prohibition on the export of additional dual use goods**, which could contribute to Iran's nuclear or ballistic programme. There will also be further goods that will be subject to strict licensing provisions.

- **Additional entities will be made subject to an asset freeze and travel ban**. These will include Iranian financial institutions as well as entities linked to the Iranian Revolutionary Guards Corps, who have been instrumental in evading existing sanctions.

- **A ban on Iranian access to EU gold and precious metals markets**.

I would stress that all of these measures are still subject to change and I will update you in my Explanatory Memorandum on the sanctions that are agreed at the Foreign Affairs Council.

The Government believes that these strong additional sanctions are necessary to persuade the Iranian regimes to step away from its pursuit of its illegal nuclear programme. Unfortunately, we have not seen any positive moves from the Iranian regime in recent months. The November 2011 IAEA report and the subsequent Board of Governors resolution set out further progress of the possible military dimensions of Iran's nuclear programme. In the wake of the IAEA report the British Government acted on 21 November to sever all financial ties between the UK financial sector and Iranian banks. On 1 December 2011 the EU sanctioned a further 200 individuals and entities. Earlier this month Iran demonstrated further defiance of its international obligations, by announcing the start of uranium enrichment at the Qom facility. As the Foreign Secretary said on 9 January, this provocative act further undermines Iran's claims that its programme is entirely civilian in nature.

As you know, the responsibility to keep your Committee informed on issues concerning sanctions is something I take seriously and the need for the override of scrutiny on this occasion is regrettably unavoidable.

18 January 2012

Letter from the Chair to David Lidington

The Committee has asked me to thank you for your letter of 18 January 2012 in which you wrote to express your regret that, due to what you described as "a long-running technical dispute during negotiations at the EU" and, by then, the urgency to agree further measures ahead of the 23 January Foreign Affairs Council, you found yourself having to agree to the adoption of a Council Regulation, Council Implementing Decision and Council Implementing Regulation before the Committee had had an opportunity to scrutinise the documents.

You went on to explain that, despite the relevant Council Decision being adopted on 1 December, a final text of the corresponding Council Regulation had only very recently emerged; and that, given the situation in Syria, that the Council Regulation giving these measures legal effect is adopted "with the utmost speed". They would, you said, be targeted at denying the regime sources of funds and economic resources, and focus on the finance, banking, insurance and oil sectors; with the Council Implementing Decision and the Council Implementing Regulation designating further individuals to be subject to the asset freeze and travel ban, and further entities to be subject to the asset freeze; and describing those individuals and entities as including military and security personnel responsible for giving orders authorising the use of lethal force against Syrian protestors, a businessman facilitating the repression, and entities providing financial support to the regime.

The post-Council statement:

- confirms that 22 persons responsible for human rights violations and eight entities financially supporting the regime have, as of 24 January, been added to the list of those subject to an asset freeze and a ban from entering the EU;

- notes that this brings the total number of entities targeted by an asset freeze to 38 and the number of people subject to an asset freeze and a visa ban to 108; and

- also notes that, in response to the widespread human rights violations, the EU has gradually imposed a comprehensive set of restrictive measures on Syria, including an arms embargo, a ban on the import of Syrian crude oil and on new investment in the Syrian petrol sector.

The background against which these further measures is, of course, set out fully in the relevant Council Conclusions. There is would appear to be nothing exceptionable about the measures themselves. However, when you submit the Council Regulation, Council Implementing Decision and Council Implementing Regulation for scrutiny, the Committee would be grateful if you would:

- do so in time for consideration at its 1 February meeting;

- use your Explanatory Memorandum to provide the House with your assessment of where matters stand with: the Arab League's endeavours to broker a solution to the violence and instability; at the UN Security Council; and at the UN Human Rights Council.

25 January 2012

Em 11060/10: Proposal for a Council Regulation amending Regulation (EU) No. 53/2010 as regards certain fishing opportunities for cod, redfish and bluefin tuna and excluding certain groups of vessels from the fishing effort regime laid down in Chapter III of Regulation (EC) No 1342/2008

EM 11951/10: Proposal for a Council Regulation (EU) No .../... of [...] establishing the fishing opportunities for anchovy in the Bay of Biscay for the 2010-2011 fishing season and amending Regulation (EU) No 53/2010

Letter from Richard Benyon to the Chair

Thank you for the questions you raised in the report of September 2010. In the drafting of the explanatory memorandum there had been an administrative mistake with regard to the legislative procedure, which should have read as "non-legislative". A corrigendum should have been issued to rectify this but regrettably, this was not the case. The view of the government has not changed from the previous government and the correction of the legal base hopefully resolves the issue you raised.

On the second element of your query, the issue of using a non-legislative legal base to create legislation is still a live issue. The UK made a written statement to Council on 20 June 2011, urging the Commission to allow member states as often as possible eight weeks to clear proposals through their national scrutiny procedures (the statement is included at the foot of this reply). The purpose of article 43.3 is to provide a practical solution to allow timely decisions relating to fishing opportunities.

I apologise for the lengthy delay in replying, which was partly caused by the ongoing talks with the commission and changes in personnel which allowed the query to go overlooked.

12 January 2012

Letter from the Chair to Richard Benyon

Thank you for your letter of 12 January, clarifying the two legal points which we raised in our Report of 8 September 2010.

It was helpful to have had this explanation, which we have noted. We do not think it necessary to report this further to the House, but we would be interested to know if, and when, you receive a response from the Commission to the written statement which the UK made on 20 June 2011.

25 January 2012

An Update on the Danish EU Presidency Development Priorities

Letter from Stephen O'Brien to the Chair

Denmark's EU Presidency began on 1 January 2012 and will end on 30 June, to be succeeded by Cyprus. I am taking this opportunity to update the Committees on the Danish Presidency's development priorities and outline the UK's objectives in relation to these, set out below:

Multi Annual Financial Framework 2014-2020

The Commission's draft regulations for the External Actions budget instruments for the Multi Annual Financial Framework (MFF) 2014-2020, published in December, will be negotiated in detail during the Danish Presidency. The UK's top priority for the overall MFF negotiations is budgetary restraint, ensuring that the EU budget contributes to domestic fiscal consolidation. However, the UK sees the EU's External Spending (Heading 4) as a relative priority and will be arguing for a strong development outcome in the negotiations with a focus on protecting or increasing the proportion of Official Development Assistance (ODA) within a reduced overall post-2013 EU budget.

The Commission has not proposed that the European Development Fund (EDF) should become part of the Budget; under the current proposals, it would maintain its position as a Member States' voluntary fund. The Department for International Development's (DFID) Multilateral Aid Review confirmed that the EDF demonstrated strong value for money and effectiveness and the UK will therefore negotiate to ensure these strengths are protected in the post 2013 arrangements.

Aid Effectiveness and Transparency

Following the successful 4th High Level Forum on Aid Effectiveness, held in Busan, Republic of Korea, the UK will push for concrete implementation of international aid effectiveness commitments and a reduction in the international aid bureaucracy. I have written a separate letter to your Committee on the outcomes of Busan and the UK priorities post Busan.

Communications on 'Increasing the Impact of EU Development Policy: an Agenda for Change' and 'The Future Approach to EU Budget Support to Third Countries'

We submitted Explanatory Memoranda 15560-11 and 15561-11 on the respective Communications above on the 28 October, in which I set out the UK's position.

Over the next six months the priorities on EU Development Policy will be:

- To work with the EU, alongside like-minded Member States such as Sweden, Denmark and the Netherlands, to make sure EU development programmes are country-owned, accountable and transparent.
- To continue engaging with the Commission and like-minded Member States to ensure that the new EU emphasis on increasing aid impact leads to clear results on the ground.

On EU Budget Support to Third Countries the UK priorities will be:

- To work closely with the Commission to make general and sector budget support more effective, in particular by increasing the focus on transparency, performance, results and value for money. We will aim for stronger assessments and risk mitigation in the new budget support guidelines and through case-by-case discussions at the country level.

The Council Conclusions for both these Communications are expected to be drafted and approved during the Danish Presidency, in the first half of 2012.

Humanitarian Aid

As was recommended in Lord Ashdown's Humanitarian Emergency Response Review (HERR), the UK will continue to strengthen its strategic relationship with the Commission / DG ECHO in order to deliver a more joined-up EU response to humanitarian emergencies. This includes through the upcoming legislative proposals on EU civil protection. Work to establish how the humanitarian and development arms of the Commission can work together more closely is also a key objective.

Trade

Through the upcoming Commission Communication on "Trade, Growth and Development" the UK will push to ensure greater coordination and coherence between the EU's aid programme and its trade policies, in line with the aims of HMG's Trade and Investment for Growth White Paper.

Migration

The UK will ensure the upcoming Communication on Migration and Mobility for Development is coordinated with our overall EU priorities on development, including our continued commitment to aid effectiveness principles.

Gender

We welcome the publication of the first annual report on the EU Plan of Action on Gender Equality in Development (2010-2015). We will work with the Commission and Member States under the Danish Presidency to make real progress in increasing EU support for girls and women.

18 January 2012

EU-Syria: further EU restrictive measures

Letter from David Lidington to the Chair

I am writing with regard to the adoption of further EU restrictive measures in view of the situation in Syria.

I regret that due to a long-running technical dispute during negotiations at the EU and due to the urgency to agree further measures ahead of the Foreign Affairs Council on 23 January, I find myself in the position of having to agree to the adoption of this Council Regulation, Council Implementing Decision, and Council Implementing Regulation before your Committee has had an opportunity to scrutinise the documents.

We continue to believe that further action by the EU will increase the pressure on President Assad's regime to put an end to the violence.

Despite the relevant Council Decision being adopted on 1 December, a final text of the corresponding Council Regulation has only very recently emerged. Given the urgency of the situation in Syria, it is important to adopt the Council Regulation giving these measures legal effect with the utmost speed. The measures implemented by this Council Regulation are targeted at denying the regime sources of funds and economic resources. The measures will focus on the finance, banking, insurance and oil sectors.

The Council Implementing Decision and the Council Implementing Regulation designate further individuals to be subject to the asset freeze and travel ban, and further entities to be subject to the asset freeze. The newly designated individuals and entities include military and security personnel responsible for giving orders authorising the use of lethal force against Syrian protestors, a businessman facilitating the repression, and entities providing financial support to the regime.

As the Prime Minister and others have stated, Assad has lost any legitimacy he once had and should now step aside. The Foreign Secretary continues to make clear that he is appalled by the continuing violence being perpetrated against civilians who have been protesting peacefully.

As you know, the responsibility to keep your Committee informed on issues concerning sanctions is something I take seriously and the need for the override of scrutiny on this occasion is regrettably unavoidable. Given the fast moving and serious nature of events in Syria, and the possibility of further measures, my officials would be happy to update your Committee on the situation in Syria whenever convenient. I will ensure that you receive an explanatory memorandum as soon as possible after the meeting of the Foreign Affairs Council.

18 January 2012

Letter from the Chair to David Lidington

The Committee has asked me to respond to your letter of 18 January 2012, in which you forewarned it of what is now headline news: the imposition by Monday's Foreign Affairs Council of further restrictive measures against the Iranian regime.

According to its statement, the Council:

- banned the import, purchase and transport of crude oil and petroleum products from Iran into the EU as well as related finance and insurance; already concluded contracts can still be executed until 1 July 2012; a review will take place before 1 May 2012;
- banned imports of petrochemical products from Iran into the EU;
- banned exports of key equipment and technology for this sector to Iran;
- banned new investment in petrochemical companies in Iran as well as joint ventures with such enterprises;
- froze the assets of the Iranian central bank within the EU, while ensuring that legitimate trade can continue under strict conditions;
- banned trade in gold, precious metals and diamonds with Iranian public bodies and the central bank;

- banned the delivery of Iranian-denominated banknotes and coinage to the Iranian central bank;
- banned a number of additional sensitive dual-use goods; and
- subjected three more persons to an asset freeze and a visa ban, and froze the assets of eight further entities

The Committee would be grateful if the Explanatory Memorandum that you say will now be provided would put some flesh on these bones, e.g., what key equipment and technology for the petrochemical sector; which additional sensitive dual-use goods; what sort of legitimate trade under what sort of strict conditions? Also, how do these measures leave British companies, both in the EU and in the USA, with regard to important oil exploration activities that have a degree of Iranian participation?

Looking at the Council Conclusions, the Committee would also be grateful if your EM would explain not just the Government's thinking (some of which you set out in your letter) but also that of the Union as a whole. The Conclusions emphasise that a comprehensive and long-term settlement that would build international confidence in the exclusively peaceful nature of the Iranian nuclear programme, while respecting Iran's legitimate rights to the peaceful uses of nuclear energy in conformity with the NPT, remains the EU's objective. The Council also urges Iran to reply positively to the offer for substantial negotiations, as set out in the High Representative's letter of 21 October 2011, by "clearly demonstrating its readiness to engage in confidence building measures and, without preconditions, in meaningful talks to seriously address existing concerns on the nuclear issue." The House would benefit from an explanation of what the HR's letter said, how these measures relate to other international action (by the US and the IAEA), and how the EU action is likely to lead to constructive negotiation rather than— as some critics have already said — prompting the Iranian regime instead to "race for the bomb".

25 January 2012

Letter from James Brokenshire to the Chair

I am writing to provide you with a summary of Second Mandate Schengen evaluations during 2011 and to provide you with a forward look for 2012.

Every existing Schengen State is subject to a "Second Mandate" evaluation once every five years in order to confirm that they are continuing to apply the Schengen acquis correctly. However, the reports of individual Schengen evaluation visits and follow up assessments are classified as restricted, whilst Council Conclusions summarising evaluation findings are only published in the public domain after they have been adopted. Council Decisions confirming compliance with Schengen arrangements are deposited for scrutiny as soon as they are declassified for publication in the public domain, but as you are aware this can be at a point close to their adoption, limiting the opportunities for scrutiny. As a result I am conscious that the opportunities for Parliamentary oversight are limited and I hope this correspondence will at least provide an overview of current and forthcoming activity.

The Working Party for Schengen Matters (Schengen Evaluation) met on twelve occasions during the Hungarian and Polish Presidencies. Both Presidencies concentrated their efforts on keeping a tight evaluation schedule. This included SIS/SIRENE bureau evaluation visits to five Schengen States, which had been delayed from 2009/2010 due to system changes. Council Conclusions confirming that France, Germany and the Netherlands had completed implementation of SIS/SIRENE recommendations made in 2010 were agreed between January and June 2011.

On the basis of the agreed five-year evaluation programme, regional evaluation of the Iberian Peninsular and Southern Alpine Schengen States continued into 2011 and significant progress was achieved by adopting reports on those countries in the field of data protection, police cooperation, land, air and sea borders, and

visas. These reports highlighted best practice as well as made recommendations for improvements. Portugal and Spain were in a position to complete implementation of recommendations very quickly and Council Conclusions confirming this were prepared and adopted by the Council in 2011.

The evaluation of Nordic countries in the fields of data protection, SIS/SIRENE bureau, police cooperation, land borders, sea borders, air borders and visa issuance at foreign embassies began in summer 2011.

Follow up to reports forms a significant part of the work of the Working Party for Schengen Matters (Schengen Evaluation). Once a Schengen State's visit report has been scrutinized and adopted, it is required to produce an action plan covering implementation of all recommendations and to give regular updates to their peers via progress reports.

For the majority of Schengen States evaluated during 2009/2010, including Benelux and Northern European Schengen States, the appropriate follow up was carried out and recommendations were implemented. Therefore Council Conclusions were prepared and adopted for Belgium, Luxembourg, the Netherlands, Germany and Austria during 2011.

Greece was evaluated in 2009/2010 and is still subject to significant scrutiny of its land, sea and air borders. A peer-to peer mission was conducted in March 2011 in order to establish the level of progress achieved in the implementation of recommendations and to determine the possible date of a revisit. Subsequently Council Conclusions were adopted calling for Greece to increase its resolve to implement its action plan and to place focus at Ministerial level on progress against that action plan. This work will continue throughout 2012.

For other Schengen States evaluated in 2011, following confirmation that recommendations from all reports have been actioned fully or are timetabled for action, we expect that a significant number of Council Conclusions and standard format Council Decisions will be tabled in 2012 confirming that they have completed evaluation and continued to meet all necessary criteria.

The evaluation of Nordic countries will continue throughout 2012. In addition, evaluation of Baltic Schengen States will begin in early 2012.

24 January 2012

Letter from the Chair to James Brokenshire

Schengen evaluations

Thank you for your letter of 24 January in which you summarise the outcome of Schengen evaluations carried out during 2011. As your letter explains, the current system of peer review provides little opportunity for Parliamentary oversight.

We note that one of the objectives of the draft Regulation proposed by the Commission on the establishment of a new Schengen evaluation mechanism is to make the process of evaluation more transparent. As it is not clear how soon negotiations on the draft Regulation will be concluded, we very much welcome your initiative in providing an overview of recent Schengen evaluations and look forward to receiving a further report on progress made in 2012 if the draft Regulation has not been agreed by then.

1 February 2012

Letter from Theresa May to the Chair

I am writing to explain a change of Government policy on the issue of whether the UK is bound by an existing EU measure which has been repealed and replaced by a new measure.

As you are aware, we believe that EU measures that impose JHA obligations only apply to the UK if we choose to opt in to them. Since the entry into force of the Lisbon Treaty, the Commission has brought forward a number of JHA proposals that repeal measures that we are currently bound by and replace them with new ones. We have not opted in to all of the replacement proposals and there has been a question as to whether the measures that we currently do take part in (the "underlying measures") would still bind us once the replacement ones entered into force.

The policy we inherited from the previous Government was that the UK was not bound by an underlying measure when we did not opt in to a measure repealing and replacing that underlying measure. Following a review of this policy, the position of the Government is that:

i) the UK considers itself bound by an existing JHA measure when we do not opt in to a new measure that repeals and replaces it; and

ii) Article 4a of the Title V Opt-in Protocol (Protocol No 21) should be interpreted as applying not only to amending measures but also to repeal and replace measures.

Our position has been reinforced by the fact that the Commission has started to introduce express wording in repeal and replace measures, making it clear that the underlying measures will continue to bind us if we do not opt in. Such language has appeared in the Directive on combating Human Trafficking, and the Directives on Asylum Qualification, Asylum Procedures and Asylum Reception Conditions. It is highly likely that the Commission will in future routinely insert such language into new measures.

We acknowledge that this new policy carries a small risk of the UK being bound by arrangements which no longer operate in relation to the EU as a whole but continue to apply as between the UK and Denmark (and sometimes Ireland). This would happen when only the UK and Denmark (and sometimes Ireland) remain bound by an underlying measure following a "repeal and replace" proposal. However, we already accept this position in relation to amending measures as a consequence of Article 4a of the Title V Opt-in Protocol. Article 4a of the Title V Opt-in Protocol provides that the UK remains bound by an underlying measure where a new measure amends it unless "the non participation of the UK and Ireland in the amended version of an existing measure makes the application of that measure inoperable for other Member States of the Union…". In such cases, the measure would cease to apply to the UK.

Our decision to accept that we continue to be bound by an underlying measure where it has been repealed and replaced has a direct read across to the interpretation of Article 4a of the Title V Opt-in Protocol. Our view is that a broad interpretation of Article 4a is the correct one and that repeal and replace measures should be considered to be a type of amending measure for the purposes of Article 4a. In practical terms, if we accept that the UK continues to be bound by the underlying measure where we do not participate in the new 'repeal and replace' measure, we believe that we must also accept that, in such cases, the UK would cease to be bound by the underlying measure where it was deemed to be 'inoperable'.

I hope you are satisfied with this explanation of our position.

8 February 2012

Letter from the Chair to Theresa May

Thank you for your letter of 8 February notifying us of the outcome of the Government's review of its policy on 'repeal and replace' measures in the justice and home affairs field.

We note that the Government's change in policy is consistent with the approach taken in recently agreed Directives on human trafficking and on standards for determining who qualifies as a beneficiary of international protection. Both Directives include an express provision stating that the repeal of earlier measures only takes effect for Member States bound by the new Directives. The Qualifications Directive also includes a recital clarifying that Article 4a of the UK's opt-in Protocol applies. We take it that the Government will wish to press for the inclusion of a similar recital in all future 'repeal and replace' measures.

We think that your explanation of the change of Government policy on 'repeal and replace' measures is likely to be of wider interest to the House. We therefore encourage you, in the interests of transparency and accountability to Parliament, to publish the policy change by means of a Written Ministerial Statement. Please inform us whether and, if so, when you intend to do so.

29 February 2012

MINISTRY OF JUSTICE

COMMISSION INITIATIVE FOR THE RIGHT TO INTERPRETATION AND TRANSLATION IN CRIMINAL PROCEEDINGS

Letter from Kenneth Clarke to the Chair

In January 2010 the European Commission published their alternative draft Directive on the right to interpretation and translation in criminal proceedings. Your Committee previously stated that you would not object to the UK not opting in to the Commission proposal if it would have an impact on the speed at which legislation could be adopted. As you are aware from my letter to you on 10 June, there is likely to be a first reading deal with the European Parliament on the Member State draft Directive. As such I have taken the decision that the UK should not opt in to the Commission's initiative. I will be informing the Presidency this week of my decision.
16 June 2010

Letter from the Chair to Kenneth Clarke

Thank you for your letter of 16 June, indicating that the UK will not opt into the Commission proposal for a Directive on the right to interpretation and translation in criminal proceedings.

We would be grateful if you could inform us the fate of the Commission proposal when it is known.
8 September 2010

EU ACCESSION TO THE EUROPEAN CONVENTION FOR HUMAN RIGHTS

Letter from Kenneth Clarke to the Chair

I am writing to you to advise you that the European Union has adopted a mandate for its negotiations with the Council of Europe regarding the European Union's accession to the European Convention on Human Rights (―the Convention‖). The UK, along with other Member States agreed the negotiating mandate at the Justice and Home Affairs Council on 4 June 2010.

The Government supports EU accession to the Convention, and it is a treaty obligation under the Lisbon Treaty. The key benefits are that it will:

 close the gap in human rights protection as applicants will, for the first time, be able to bring a complaint before the European Court of Human Rights (―the Strasbourg Court‖) directly against the EU and its institutions for alleged violations of Convention rights;

 enable the EU to defend itself directly before the Strasbourg Court in matters where EU law or actions of the EU have been impugned; and

 reduce the risk of divergence and ensure consistency between human rights case law between the Strasbourg and Luxembourg Courts.

The EU will be alone amongst parties to the ECHR in that it is not a state. Clearly, the modalities of accession must reflect this fact. However, there is little precedent from which to work, and it will therefore be legally and technically challenging to come up with an approach that respects the particular characteristics of both the EU and the ECHR.

In particular, it will be necessary to translate concepts that are familiar when applied to states – for example, the exhaustion of domestic remedies – to this different context. There may also be challenges relating to cases that are brought against both the EU and one of its member states. We will especially want to ensure that the EU's accession does not have an unanticipated impact on the functioning of the Strasbourg and Luxembourg Courts, and that it is practically possible for applicants to bring proceedings to hold the EU to its obligations under the Convention in the same way as they can the existing member states. We will also be alert to ensure that the UK's interests as a member of the EU or as a party to the Convention are not disadvantaged by the EU's accession.

We expect negotiations with the Council of Europe to start later this year.

The final agreement between the EU and the Council of Europe will be subject to unanimous agreement between the EU Member States, and will be subject to European Parliamentary consent. It will also need to be agreed by the 47 Member States of the Council of Europe, which are also contracting parties to the Convention. EU accession will not extend the competence of the EU or affect the position of the Member States positions in relation to the Convention.

I will write again as negotiations progress, and prior to a final accession agreement being concluded.
30 June 2010

Letter from the Chair to Kenneth Clarke

Thank you for your letter of 30 June on the adoption of the negotiating mandate for the EU's accession to the European Convention on Human Rights (ECHR).

The EU's accession strikes us as potentially a very significant development both in its internal legal order (despite Treaty provisions to the contrary): it would amount to submitting the acts of EU institutions to independent external control by the European Court of Human Rights (ECtHR); and in the way in which EU citizens' human rights are protected. We say ―potentially because it is difficult on the information before us to know how much the EU's accession to the ECHR is a symbolic gesture, and how much it will lead to practical changes for UK citizens.

We note that the Cabinet Office Guidance recommends that Departments should provide the scrutiny Committees with ―details of negotiating mandates as soon as they have been approved and an ―indication should be given as to the parties to the negotiation, the subject matter and any special factors (paragraph 2.3.5). Whilst we are grateful for your explanation of how the Government views the benefits of accession, and of the difficulties that you foresee arising in the negotiations, we ask you to provide further details of the subject matters addressed by the mandate, as per the Cabinet Office Guidance. This will help us to scrutinise this policy.

In the context of the key benefits which the Government thinks will accrue from the EU's accession, we would also be grateful if you could explain further:

― what the current ―gap is in human rights protection that will be closed by accession;

— what you mean by ―directly when you say ―applicants will, for the first time, be able to bring a complaint before the European Court of Human Rights (―the Strasbourg Court) directly against the EU and its institutions for alleged violations of Convention rights‖; and

— how accession will ―reduce the risk of divergence and ensure consistency between human rights case law between the Strasbourg and Luxembourg Courts‖ when Article 52(3) of the Charter on Fundamental Rights specifically allows for EU human rights law to provide ―more extensive protection than the ECHR. In the light of this it is difficult to see why you have concluded that a key benefit of accession to the ECHR would be consistency between the two legal domains. On the contrary, there is concern in academic circles that the Charter will lead to legal uncertainty in how human rights are applied in Europe by introducing an additional standard of ―fundamental‖ right.

Finally, the Court of Justice in Luxembourg will be bound by the ECtHR's interpretation of EU internal rules which engage human rights after the EU accedes to the ECHR; so we ask for your views on how the EU's autonomous legal order will be preserved, particularly in the light of the Court of Justice's Opinions 1/91 and 1/00.

We look forward to hearing from you.
8 September 2010

EU-US AGREEMENT ON THE PROTECTION OF PERSONAL DATA WHEN TRANSFERRED AND PROCESSED FOR LAW ENOFRCEMENT PURPOSES

Letter from Kenneth Clarke to the Chair

I am writing to inform the Committee that the European Commission has published a draft negotiating mandate for the proposed agreement (named above) between the European Union and the United States of America. Unfortunately, I am unable to share the draft negotiating mandate with the Committee as it is a confidential document restricted to the Council.

Both the European Council and the European Parliament had asked the Commission to produce a recommendation for an EU-US data protection Agreement. In the Stockholm Programme the European Council invited the Commission to propose a ―recommendation for the negotiation of a data protection and, where necessary, data sharing agreement for law enforcements purposes with the US, building on the work carried out by the EU-US High-Level Contact Group on data protection.‖ The European Parliament has called for an EU-US agreement ensuring adequate protection of civil liberties and personal data: most recently in the recommendation of the Committee on Civil Liberties, Justice and Home Affairs of 5 February 2010,

The Commission has brought forward the proposed Agreement under Articles 16 and 216 of the Treaty of the Functioning of the European Union (TFEU), which means that the UK's opt in Protocol will not apply to it. This Agreement itself will not impose any substantive obligations to exchange data for law enforcement purposes: its effect will be that where data transfers take place under some other subsequent relevant agreement falling within Title V of the TFEU, the data protection requirements in this Agreement will govern those transfers. The UK's opt-in will apply to any such Title V instrument.

The Government strongly supports the proposed Agreement and shares the Commission's goal of ensuring a high level of protection of the personal information that is transferred as part of transatlantic cooperation in criminal matters. However, we will want to ensure that the terms of the Agreement do not go beyond the EU's competence. In particular, the Agreement should not attempt to define national security or apply to existing bilateral arrangements.

The intention of the agreement is to bridge the gaps and remove uncertainties between EU and US data protection laws and practices through enforceable data protection standards and to establish mechanisms for implementing them effectively. This would imply placing some limitations or restrictions on the rights of data subjects, which due to the specific characteristics of the matter, should be limited to criminal and judicial proceedings. The agreement also aims to provide a clear and coherent legally binding framework of personal data protection standards that must be met when personal data are transferred between the EU and US for these

purposes.

The agreement would not remove the requirement for a specific legal basis for transfers of personal data between the EU and the US.

The Commission hope that the Justice and Home Affairs Council will agree the mandate in October. I will write to update you once that happens.
22 July 2010

Letter from the Chair to Kenneth Clarke

I refer to your letter of 22 July telling us that the negotiating mandate for the above agreement is to be adopted in October. We would be grateful for an update on this, and look forward to hearing from you in due course with the details of the mandate including, in accordance with the Cabinet Office guidance, any special factors of which we should be aware.
22 July 2010

EU ACCESSION TO THE EUROPEAN CONVENTION OF HUMAN RIGHTS

Letter from Kenneth Clarke to the Chair

Thank you for your letter of 8 September about the accession of the European Union (EU) to the European Convention on Human Rights (the ECHR). I address each question separately and in full below.

You have asked for more information on the subject matters addressed by the mandate. Papers for the first negotiation meetings between the Council of Europe and the EU – which took place in June - have been released which set out five broad categories of issues for discussion:
(a) issues around the scope of the EU's accession to the ECHR, including accession to additional Protocols and ancillary agreements; and the status of reservations, declarations and derogations;
(b) technical adaptations to the provisions of the ECHR and other instruments, particularly the clarification of the application to the EU of terms in the Convention that were chosen in the context of its parties being sovereign states;
(c) the procedure before the European Court of Human Rights (ECtHR), including the participation of the EU in proceedings before the Court; the introduction of a ―co- respondent‖ mechanism for applications that engage the responsibilities of both the EU and its Member States; the prior involvement of the European Court of Justice in determining the compatibility of an EU act with the ECHR; and further related technical amendments;
(d) the institutional and financial issues, including the election and participation of a judge elected in respect of the EU in the ECtHR; the participation of the European Parliament in the election of judges by the Parliamentary Assembly of the Council of Europe; the participation of the EU in the Committee of Ministers of the Council of Europe when exercising functions under the ECHR; and the participation of the EU in paying the costs of the Convention system; and
(e) matters relating to the accession instrument itself, including how it will be ratified and come into force.

What is the current ―gap‖ in human rights protection that will be closed by accession?

Broadly speaking, the reference to a gap denotes the fact that, currently, the EU is not directly accountable to the ECtHR. There are two respects in which the EU's accession to the ECHR will address this issue.

First, at present, individuals who consider that the actions of the EU have breached their fundamental rights cannot bring proceedings against the EU in the European Court of Human Rights. Following the EU's accession to the ECHR, they will be able to do so. This will in itself be a significant step, because the EU will be directly answerable to the Strasbourg Court for its own actions.

Second, the EU's accession to the ECHR will resolve an uncertainty about the extent to which Member States are answerable to the Strasbourg Court for the actions of the EU.

As the law stands, when individuals consider that the actions of the EU have breached their fundamental rights, they may in some circumstances bring a claim in the Strasbourg Court against one or more Member States. The ECtHR has held that when EU law results in a breach of the ECHR, the Member States can be held responsible for that breach, because they enabled the EU to act in the way that it did. For example, in *Matthews v UK* (1999) 28 EHRR 361, the UK was held responsible for a violation arising from the EU's primary legislation on the grounds that the UK had freely entered into the relevant EU obligations.

However, it is open to question whether the Member States can be held responsible in the Strasbourg Court for violations resulting from the actions of individual EU institutions, such as the Commission. The point arose in *Senator Lines v 15 States* (2004) 39 EHRR SE3, but it was not resolved because the Court found that the claim was inadmissible on other grounds.

The EU's accession to the ECHR will resolve this uncertainty. Once the EU is a party to the ECHR, there will be no doubt that individuals will be able to bring proceedings against the EU in the Strasbourg Court on the grounds that the acts of the EU institutions have breached their Convention rights.

What do you mean by —directly‖ when you say that —applicants will, for the first time, be able to bring a complaint before the European Court of Human Rights (—the Strasbourg Court‖) directly against the EU and its institutions for alleged violations of Convention rights‖?

At present, as described above, the only way for individuals to argue in the Strasbourg Court that the EU has breached their ECHR rights is for them to bring proceedings against one or more Member States. Once the EU has acceded to the ECHR, it will be possible for the EU itself to be the respondent in proceedings in the Strasbourg Court, and to defend claims in its own name.

How will accession —reduce the risk of divergence and ensure consistency between human rights case law between the Strasbourg and Luxembourg Court‖ when Article 52(3) of the Charter on Fundamental Rights specifically allows for EU human rights law to provide —more extensive protection‖ than the ECHR?

The EU will be bound by the Strasbourg Court's judgments in cases in which it is a respondent. Furthermore, like other contracting parties to the ECHR, the EU will need to have regard to the Strasbourg jurisprudence (reflecting the ECJ's own long-standing practice, in cases such as Case C-465/07 *Elgafaji* [2009] ECR I-921, paragraph 28).

Article 52(3) of the Charter confirms that the rights in the ECHR have precisely the same meaning in EU law. It provides that insofar as Charter rights correspond to rights in the ECHR, —the meaning and scope of those rights shall be the same as those laid down by the said Convention‖. The explanation of Article 52(3), to which Article 6(1) TEU requires courts to have regard, makes it clear that the purpose of this provision is —to ensure the necessary consistency between the Charter and the ECHR by establishing the rule that, in so far as the rights in the present Charter also correspond to rights guaranteed by the ECHR, the meaning and scope of those rights, including authorised limitations, are the same as those laid down by the ECHR.‖ The explanation then lists those provisions in the Charter that correspond to provisions in the ECHR, as well as those where the right under EU law goes further than the right under the Convention. There is therefore no doubt about which rights in the Charter correspond to rights in the ECHR, and it is clear that to the extent that they correspond, they must be interpreted in the same way.

Furthermore, once the EU has acceded to the ECHR, individuals who argue unsuccessfully in the ECJ that the EU has breached their Convention rights will be able to make the same arguments before the Strasbourg Court, whose decision will be binding on the EU. Through this mechanism, the Strasbourg Court will have the final say about whether the EU has interpreted Convention rights correctly, which will ensure that the Convention is applied consistently.

How will the EU's autonomous legal order be preserved, particularly in the light of the Court of Justice's Opinions 1/91 and 1/00?

In Opinion 1/91 [1991] ECR I-6079 and Opinion 1/00 [2002] ECR I-3493, the ECJ held that the EU had no competence to enter into international agreements that would permit a court other than the European Union's Court of Justice (ECJ) to make binding determinations about the content or validity of EU law.

There is no reason to suppose that the agreement by which the EU accedes to the ECHR will fall foul of this principle. Article 6(2) TEU expressly provides that the EU ―shall accede‖ to the ECHR. It follows that there can be no suggestion that the EU's accession is incompatible with the Treaties. Indeed, as mentioned above, the ECJ has always considered the case law of the Strasbourg Court when interpreting the scope of Convention rights as they apply in the EU's own legal order.

Furthermore, the Treaties expressly require that the accession agreement should be drafted in such a way that the autonomy of EU law is not undermined, and the EU is therefore under a legal obligation to ensure that the accession agreement respects these constraints. In particular, Article 6(2) TEU provides that accession ―shall not affect the Union's competences as defined in the Treaties‖; Article 1 of Protocol No 8 provides that the accession agreement must ―make provision for preserving the specific characteristics of the Union and Union law‖; Article 2 of the Protocol provides that accession ―shall not affect the competences of the Union or the powers of its institutions‖; and Article 3 of the Protocol provides that the accession agreement must not affect Article 344 TFEU, which requires that disputes concerning the interpretation or application of the EU Treaties must be settled only in accordance with the provisions of the Treaties.

I hope this letter answers your queries and is helpful to your committee in considering this issue.
21 September 2011

Letter from the Chair to Kenneth Clarke

Thank you for your thorough reply of 21 September to our letter of 8 September. Given the importance of the topic, we would like to be able to report the contents of both of your letters on the EU's accession to the ECHR, and our replies, to the House. But in order to do so an EU document should be deposited with the House. We are quite aware that the negotiating mandate is confidential and so non-depositable, but we would ask you to consider whether a related EU document could be deposited instead.
27 October 2010

POTENTIAL RECOMMENDATION ON THE RIGHT TO INTERPRETATION AND TRANSLATION IN CRIMINAL PROCEEDINGS

Letter from Kenneth Clarke to the Chair

I wanted to update the Committee before recess about a potential Recommendation on Interpretation and Translation.

As you may recall, the initial Framework Decision on Interpretation and Translation was originally accompanied by a Resolution. It described practical measures and action which should be taken in relation to interpretation and translation in criminal proceedings. Several Member States are very keen that the content of the Resolution should not be lost and a new proposal should be brought forward as soon as possible.

The form of such new proposal seems likely to be a Recommendation. It is not yet clear whether such Recommendation will be on the initiative of a group of Member States or the Commission. The Presidency has expressed a desire to see it adopted alongside the Directive on Interpretation and Translation. The Directive is likely to be adopted at the October Justice and Home Affairs Council meeting.

It is unlikely that any text for a Recommendation will be published until September due to the European institutions Summer recess period. If it takes the form of a Recommendation to be adopted by the Council, it would then trigger the UKs opt in protocol. The timing of this would not sit easily with the UK Parliamentary recess period and the sitting of the scrutiny committees. We will continue to update you and send any documents that are made available at the earliest possible opportunity to try and alleviate any possible difficulties.

19 July 2010

Letter from the Chair to Kenneth Clarke

Thank you for your letter of 19 July. We note that the Directive on the right to interpretation and translation in criminal proceedings was adopted in October but no word so far on a possible accompanying Recommendation. We would be grateful to you for an update on this proposal.
10 November 2010

Letter from Kenneth Clarke to the Chair

Thank you for your letter of 10 November. There has been no progress regarding the potential Recommendation on the right to interpretation and translation in criminal proceedings that would accompany the Directive. If such a Recommendation is proposed the UK's opt in protocol will apply and the text will be deposited in the normal way.
25 November 2010

HUNGARIAN PRESIDENCY PRIORITIES FOR JUSTICE ISSUES OVER THE NEXT SIX MONTHS

Letter from Kenneth Clarke to the Chair

As you know, Hungary takes over the rotating European Union Presidency on 1 January 2011. I am writing to give you an overview of the Hungarian Presidency's priorities in the areas of justice on which the Ministry of Justice leads. I hope that this will help in the planning of the scrutiny of dossiers that are likely to be considered by the Justice and Home Affairs (JHA) Council during this period. The Hungarian Presidency is planning to host the following JHA Councils:
20 — 21.January (Informal Council) in Godollo, Hungary 24 — 25 February in Brussels
11 — 12 April in Luxembourg
9 —10 June in Luxembourg

In the area of criminal law, the Hungarian Presidency will inherit a number of negotiations. As you are aware, there are ongoing negotiations on the draft Directive on the Right to Information in Criminal Proceedings and the draft Directive on combating the sexual abuse, sexual exploitation of children and child pornography. The Hungarian Presidency will take forward negotiations with the European Parliament and may aim to reach agreement on both Directives by the end of the Presidency. I will write to you to update you on developments as these negotiations move forward.

The Hungarian Presidency may also begin negotiations on a Directive on the right to access to a lawyer. This is the third measure of the "roadmap" to strengthen the procedural rights of suspected or accused persons in criminal proceedings, which is part of the Stockholm Programme. The Commission is likely to publish this proposal around June 2011. A green paper on pre-trial detention, another of the Roadmap measures is also expected to be published under the Hungarian Presidency.

Negotiations on the EU's Accession to the European Convention on Human Rights will continue under the Hungarian Presidency.

Following the adoption of the negotiating mandate for EU-US agreement on the protection of personal data at the JHA Council on 3 December, the Commission has begun negotiations with the United States. When the negotiations with the United States have concluded, the draft agreement will be presented to the JHA Council for adoption.

In June 2011, we expect the Commission to publish legislative proposals for a Data Protection Instrument aimed at revising the legal framework for data protection. We also expect the Commission to publish a package of measures relating to victims of crime in May 2011, which we expect to include a legislative instrument in the area of civil judicial co-operation, the Hungarian Presidency will continue negotiations on

succession and wills. As you will recall, the UK decided not to opt-in to this proposal.

The Presidency will begin negotiations on the proposal to revise the Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I). It is expected that the UK decision on whether to opt in to this proposal will have to be made around mid to end of March 2011.

It is expected that the Commission will bring out a proposal on Matrimonial Property Regimes during the Hungarian Presidency. if it does, it is likely that the Presidency will start the negotiations on this proposal.
17 December 2010

Document 12265/09: Proposal for a Council Decision on the conclusion by the European Community of the Convention on the international recovery of child support and other forms of family maintenance

Letter from Kenneth Clarke to the Chair

As reported in the European Scrutiny Committee's thirty-second report for the Session 2008-09 (HC 19-xxx) this proposal cleared scrutiny on 4 November 2009. For your information I am writing to update your Committee on the subsequent developments during the negotiations. It was agreed that the Commission's proposal should be split into two draft Council Decisions — one on the signing, on behalf of the EU, of the Hague Convention and the other on the conclusion, on behalf of the EU, of the Convention. Apart from technical changes and the issues highlighted in this letter, the content of the split proposals is in line with the Commissions original proposal.

You will be aware that one of the main issues arising from the Commission's proposal was the question of external EU competence. Questions were raised about whether the provisions on administrative cooperation and legal aid in the Convention fell within the EU's exclusive competence. As a way of moving forward the negotiations it was agreed that any reference to exclusive competence in the text should be removed and that the Council and the Commission should make the following joint statement to be entered in the minutes of the Council meeting at which the decision on signature is agreed The Council and the Commission recognise that arrangements between a Member State and a third State on administrative cooperation and on legal aid as a general rule, do not affect Union rules or alter their scope.

However taking into account the existence of Regulation (EC) No 4/2009, the Union has decided in this particular case, to exercise competence over all the matters governed by the 2007 Hague Convention. i e also over matters relating to administrative co-operation and legal aid, and to conclude the Convention alone.

The Union should therefore, at the time of conclusion of the Convention make the declaration provided for in Article 59(3) thereof the exorcise by the Union of competence over matters relating to administrative cooperation and legal aid in the context of this particular Convention does not preclude that Member States may agree on arrangements on such matters with third States, provided that such arrangements do not affect Union rules or alter their scope in accordance with the case law of the Court of Justice.

The Government has recently given further consideration to this matter and has concluded that by applying the test set down in the case law of the ECJ (established most notably in the AETR case) the adoption of the Maintenance Regulation in 2008 has generated exclusive external EU competence to sign and conclude the Convention. It accepts that if Member States were permitted to sign and conclude themselves a Convention regulating the arrangements between EU Member States for recognising and enforcing child support and maintenance payments this could undermine the rules in the Maintenance Regulation which regulate the same matters. It also considers that it is clear from the AETR case law that the EU cannot acquire exclusive competence in relation to administrative cooperation and legal aid more generally (Le. in matters unrelated to child support and maintenance) as a result of the Maintenance Regulation or the conclusion of the Hague Convention. The
Government's assessment of the exclusive competence issues does not affect its support of the proposed text of either proposal, including the draft declaration.

With regard to other matters, the Commission proposed that the scope of the Convention should be extended

to all maintenance obligations arising from a family relationship, parentage, marriage or affinity. This would align the scope with that of the Maintenance Regulation. However, to date, it has not proved possible to obtain agreement between Member States on this issue. As a compromise it has been suggested that Chapters II and Ill of the Convention should be extended to cover maintenance obligations between spouses and former spouses and that after the Convention has been working for a number of years (seven are proposed) the possibility of extending the scope to other forms of maintenance will be considered. It is proposed that a declaration is made to that effect. While the Government would prefer the greatest possible alignment in scope between the Convention and the Regulation it is prepared to accept this compromise if it proves impossible to negotiate the wider scope.

The Commission also suggested that Member States should indicate the languages in which they would accept any applications and related documents under the Convention but that all should ensure they accepted both French and English. During the negotiations it has been agreed that Member States should be able to choose French or English but will not be required to accept both. The Government can support this suggestion.

As a practical measure it has been agreed that while all notifications from Member States about, for example, the contact details of their central authorities should initially be channelled through the Commission, any subsequent amendments can be sent to the Permanent Bureau of the Hague Conference direct. There has also been clarification that day to day contact between central authorities in each Member State should be made directly. The Government believes these are helpful suggestions.

It is not yet clear when what is now the two proposals are likely to be agreed but there is a possibility the Presidency will seek agreement at the December JHA Council.
8 November 2010

Letter from the Chair to Kenneth Clarke

Thank you for your letter of 8 November. The Committee was grateful for the update on negotiations.
26 January 2011

EU·US Agreement on the protection of personal data when transferred and processed for the purpose of preventing, investigating, detecting or prosecuting criminal offences, including terrorism in the framework of police cooperation and judicial cooperation in criminal matters

Letter from Kenneth Clarke to the Chair

Thank you for your letter of 20 October about the negotiating mandate for the above agreement. I am writing to update you on developments following the Justice and Home Affairs (JHA) Council on 3 December.

As I stated in my letter of 22 July, the Government strongly supports the proposed agreement and shares the European Commission's goal of continuing to ensure a high level of protection of the personal information that is transferred as part of transatlantic cooperation in criminal matters. Following negotiations, the UK has ensured that the negotiating mandate does not attempt to define national security. However, we have not been able to secure the explicit exclusion of existing bilateral agreements which was one of the Government's objectives.

On 3 December, the JHA Council held a Qualified Majority Vote on the adoption of the negotiating mandate for the agreement. I voted against adoption of the negotiating mandate, as the Government believes it is the UK rather than the EU that should negotiate rules concerning data exchanges between the UK and the US under their bilateral arrangements. Although some Member States expressed similar concerns, the negotiating mandate was adopted by a qualified majority. The Commission intends to begin negotiations with the United States very shortly. At the conclusion of negotiations, the draft agreement will be presented to the JHA Council for adoption. I will keep the Committee informed of developments.
13 December 2010

Letter from the Chair to Kenneth Clarke

Thank you for your letter of 13 December.

The fact that the negotiating mandate for the above agreement does not exclude pre-existing bilateral agreements strikes us as being of potential legal significance. So that we can understand the issue better, we would be grateful for an outline of the legal grounds on which the UK argued that the agreement should exclude bilateral agreements and on which the Commission argued that it should not; and for details of the bilateral agreements in question.
2 February 2011

DRAFT COUNCIL CONCLUSIONS ON THE ROLE OF THE COUNCIL OF THE EUROPEAN UNION IN ENSURING THE EFFECTIVE IMPLEMENTATION OF THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

I am writing to inform your Committee that the Hungarian Presidency of the EU Council has published draft Council Conclusions on the Council's role in ensuring the effective implementation of the Charter of Fundamental Rights (the Charter). The Presidency is hoping to adopt the Council Conclusions at the Justice and Home Affairs Council on 25 February. The Presidency is keen to ensure that the Council, in line with recent communications from the Commission and the European Parliament (EP), has sufficiently robust processes to ensure that the Charter is effectively implemented in the legislative process.

The main points in the draft Council Conclusions are as follows:
• That the Council acknowledges that it must respect the Charter in relation to both amendments to Commission proposals and when Member States are drafting own-initiative proposals:
• That the Council reaffirms its commitment to guarantee that Fundamental Rights are respected in its decision making processes in a visible and transparent way for the benefit of EU citizens:
• Any processes should not be burdensome, long or efficient and the Council should rely on existing structures within the EU:
• Member States are reminded that they are the first level of checking for compliance with Fundamental Rights and Charter obligations:
• Guidelines should be drafted by the Fundamental Rights, Citizens Rights and Free Movement of People Working Party (FREMP) and the Council Legal Service for the Council on how to identify and solve problems over Fundamental Rights in its own proposals:
• The Council and its working groups should be able to refer instances on a case by case basis where necessary to FREMP to seek its expertise and assistance;
• The Council will make full use of the existing mechanism of making references to the Fundamental Rights Agency within the Agency's mandate to ensure that the Agency's expertise is properly utilised;
• FREMP will maintain and reinforce co-operation with the Fundamental Rights Agency; and
• There will be an annual exchange of views on the Commission's annual report on the application of the Charter.
The Government is committed to ensuring that the Charter constrains EU legislation and that the principles and rights enshrined in the Charter are accurately reflected in EU legislation, in line with the UK's Protocol to the Charter. I am content that the Council Conclusions will ensure that the Council and Member States take a rigorous approach, using existing structures and without increasing the burden upon the FREMP working group.
7 February 2011

COUNCIL CONCLUSIONS ON THE ROLE OF THE COUNCIL OF THE EUROPEAN UNION IN ENSURING THE EFFECTIVE IMPLEMENTATION OF THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Letter from Kenneth Clarke to the Chair

Thank you for your letter of 16 February in response to mine of 7 February concerning
the Council conclusions on the role of the Council of the European Union in implementing the Charter of Fundamental Rights. I am writing to the Committee to confirm that the JHA Council adopted these Council

Conclusions on Friday 25 February 2011; a copy is enclosed for your information. These Conclusions were passed by A point. They were considered to be uncontroversial; aimed at reviewing the Council's own internal systems in light of similar considerations by the European Commission and European Parliament. I am also writing to provide the information regarding the FREMP working group that you requested.

As set out in my letter to you of 7 February. the Council Conclusions acknowledge that the Council, being a co-legislator must respect the Charter both when making amendments to Commission proposals and in any acts the Council adopts on the initiative of a quarter of the Member States. It reaffirms its commitment to guarantee that Fundamental Rights are respected in its internal decision making processes in a visible and transparent way for the benefit of EU citizens.

The Council conclusions refer to the existing structure of workable and reliable tools to ensure compliance with fundamental rights, including the expertise, knowledge and experience of Member States and the Council Legal Service.

The Council conclusions recognize the responsibility of the Council preparatory instances (policy-specific working groups) for scrutinizing the compliance with the Charter. but that they should be assisted in this task by the Council Legal Services where appropriate, and through the use of guidelines which help them identify and resolve fundamental rights issues arising in their dossiers. These guidelines will be drawn up by the Working Group on Fundamental Rights. Citizens Rights and Free Movement of People (FREMP). They should also make use of the expertise of the Fundamental Rights Agency, asking for its advice on issues which fall within its remit. The Council conclusions also state the intention that FREMP should consider and take account of relevant reports published by the Fundamental Rights Agency. Finally they commit to an annual exchange of views on the Commission's annual report on the application of the Charter and to consider relevant publications by the Fundamental Rights Agency.

You asked specifically for more information about FREMP. An adhoc working group on fundamental rights was set up during the Swedish Presidency, and was charged with dealing with matters concerning the EU Agency for Fundamental Rights. the Daphne Programme to combat violence, prevention of drug misuse and information for the period 2007—2013 and the Fundamental Rights and Citizenship programme for the period 2007—2013. In December 2009 Coreper was invited to adopt a number a changes to the JHA working structure including to this adhoc working group, In early 2010 the Working Party on Fundamental Rights, Citizens' Rights and the Free Movement of Persons (FREMP) was established by Coreper as a permanent replacement for the Ad hoc Working Group and tasked with all matters relating to fundamental rights and citizens rights including free movement of persons, negotiations on accession of the Union to the ECHR, the follow-up of reports from the EU Agency for Fundamental Rights. As with other working group decisions by FREMP are confirmed by Coreper and JHA Council.

In practical terms, FREMP deals with all ―cross-cutting‖ business pertaining to fundamental rights within the EU; it does not ordinarily address human rights in the context of foreign policy. Its business includes: matters relating to and general reports of the EU Agency for Fundamental Rights (FRA); the Commission's Fundamental Rights and Citizenship funding Programme (FRCP); and general Council conclusions and Commission communications on fundamental rights matters.

FREMP is attended by representatives from Permanent Representations and national capitals. The United Kingdom is usually represented by the official in the Ministry of Justice with responsibility for EU fundamental rights business, who may from time to time be joined or (for brief meetings for which travel to Brussels is not cost-effective) substituted by officials from the United Kingdom Permanent Representation.
3 March 2011

Letter from the Chair to Kenneth Clarke

Thank you for your letter of 3 March. The Committee was very grateful for your explanation of the Council conclusions and the mandate of the FREMP working group.
9 March 2011

Draft directive of the European Parliament and of the Council on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004168IJHA (14279/10)

Letter from Kenneth Clarke to the Chair

I am writing to update you on progress on the above Directive. On 14 February the LIBE (Civil Liberties Justice and Home Affairs) Committee held an extraordinary general meeting to give an orientation vote on their amendments. There are a large number of amendments and this letter focuses on those that the Presidency has highlighted where the rapporteurs believe that amendment of the text is required and those where the Presidency will seek clarification of some the European Parliament's (EP) amendments. Formal Trilogue discussions between the ER Presidency and the Commission began on 16 March and this will initially focus on clarifying the EPs objectives with certain amendments.

I outline the main areas the EP has suggested amendments to below:

Article 2 Definitions — The EP has proposed that a definition of sex tourism should be added to this Article. However their proposed definition is unclear and in terms of the Directive as a whole it is unclear what function the definition would have as the term is not used in other Articles. However it is possible that a description of the various actions which make up sex tourism may be considered as part of the introductory recitals. This will be subject to further discussion.

Articles 4-6 (Offences):

With regard to the penalties for the offences in Articles 4 to 6 the EP wishes to provide for fines in conjunction with minimum maximum terms of imprisonment and the levels of penalties proposed by the EP are higher than those endorsed by the Council in December. It would be unusual for a Directive to refer to fines in the criminal law Articles although in the UK, when it comes to sentencing, the Judiciary has the flexibility to impose fines instead of, or as well as, terms of imprisonment.

The EP also propose amending the Solicitation (Grooming) offence in Article 6 to emphasise that the manipulation of the child is the aim of the offender. and this would limit the scope of this article and make any offence more difficult to prosecute. Article 6 currently replicates the Solicitation offence in Article 23 of the Council of Europe Convention on Combating the Sexual Exploitation of Children (2007>. The EP amendment is unclear in its intent and the Presidency will be seeking clarification on this amendment from the EP at the beginning of trilogue.

Article 7 (Instigation , Aiding and Abetting)
In the original Commission text Article 7 (3) sought to make it an offence to organise travel arrangements for the purpose of committing child sex offences. The EP amendments suggest that ―other arrangements should also be a modus operandi of a crime‖ for such offences. The Presidency will again be seeking clarification of this amendment at the beginning of trilogue as the intent is unclear.

Article 8 (Consensual sexual Activities) — The EP amendments suggest the need for (possibly non-criminal) alternative measures in case of acts committed by children. This is a matter already addressed in a recital introduced by the Council text agreed in December and it should not therefore be necessary to include it in the text of the document.

Article 9 (Aggravating Circumstances) — The EP propose a number of new aggravating circumstances which include, for instance, references to slower physical and psychological development or ―recognised types of dependence of the victim, and the purpose of economic revenue or travelling abroad for committing the offence. The Presidency will be seeking clarification of the purpose of such amendments which appear to be examples of aggravating factors which already exist.

Article 10 (Disqualifications) — The EP wishes to broaden the requirements around the exchange of information concerning disqualifications from working with children for some voluntary activities and also suggests that Member States introduce registers of sex offenders. In the UK our Vetting and Barring Scheme

already covers some voluntary activities and the notification requirements for sex offenders set out in Part 2 of the Sexual Offences Act 2003 meet the suggestion of a register‘.

Article 10a (new — Seizure and confiscation) — The EP wishes to add rules on the seizure and confiscation of proceeds from child sex offences including rules on how such proceeds are spent. The issue of how confiscated assets are used by Member States is one which we believe is for Member States to decide on.

Article 14 (Investigation and Prosecution) — The EP has put forward a number of amendments to provide for a minimum of 15 years in terms of a statute of limitations for prosecutions; the establishment of an early warning system against cybercrime and the elimination of obstacles by internal investigations by other institutions. The UK does not have a statute of limitations‘ for the offences in this Directive and the additional amendments will be subject to discussion as to whether they are appropriate for adding to the Directive.

Article 15 (Reporting suspicion of sexual exploitation and abuse) - The EP has proposed a number of amendments to provide for rules on training, child-friendly measures, hotlines and other tools for preventing criminal offences against children. Many of these measures already exist in Member States, although in some cases they are provided by the Private Sector or NGOs. There are also a number of amendments where the intention of the proposal is unclear.

Articles 17-19 (Victim and Witness Protection) - The EP proposes a number of victims‘ protection measures, including assistance in case of family violence, obligation to inform the victim of the release of the offender, protection of data and privacy, witness protection, red alert systems, individual rehabilitation programmes, public awareness raising, etc. Some of the proposed amendments are in substance very similar to those proposed to Article 15. The Presidency will seek to rationalise the various amendments to Articles 15 and 17 for further consideration.

Article 16 - The EP proposes broad rules of jurisdiction, including making all grounds of extraterritorial jurisdiction compulsory without the possibility of opt out. These amendments would undermine the flexible approaches in the application of jurisdiction set out in the previous Framework Decision, the CoE Convention and the Council text. We do not agree with the EP amendment.

Article 21 — The EP has proposed changes to the rules on blocking and deleting websites showing images of child abuse and cooperation with third countries. They consider blocking a supplementary tool that may be available but it should also be subject to legislative and judicial control, transparent procedures and safeguards. We note that the EP amendments do not apparently allow for the self-regulatory regimes used in the UK and other Member States by the Internet industry to prevent abuse of their systems and disrupt the distribution of this illegal material. The EP‘s proposal is unacceptable to us and we have made our position clear to the Presidency. We will await further developments on this issue during trilogue negotiations. As I have highlighted the Presidency believe that further clarification is needed on a significant number of amendments from the EP at the beginning of trilogue. The position on these amendments will then be discussed with MS as trilogue continues. I
will keep you informed of further developments in relation to this Directive. I understand that the debate you requested in your report of 2 February is being organised via the usual channels and will take place in the coming weeks.
28 March 2011

Letter from the Chair to Kenneth Clarke

Thank you for your letter of 28 March telling us of the LIBE Committee's proposed amendments to this draft Directive. Some are significant, in particular with respect to criminal penalties and criminal jurisdiction. The Committee recommends that the Government firmly resist amendments that would impose further obligations on the national criminal justice system and would remove the flexibility reflected in the Council's draft. Please keep us informed of developments.
27 April 2011

Draft Directive of the European Parliament and of the Council on combating sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68!JHA (14279/10)

Letter from Kenneth Clarke to the Chair

Thank you for your letter of 27 April. I am writing to further update you on progress on the above Directive. The Hungarian Presidency are keen to seek a First Reading Deal on this text with the European Parliament before the end of their tenure this month.

Formal trilogue discussion with the European Parliament (EP) has resulted in a number of changes being made to the text that was agreed by the Council in December, During a short period of intense negotiations we have been able to ensure that these amendments are acceptable to the UK. Whilst I am unable to send a copy of the final text, which is still subject to some negotiation, I wish to highlight the main changes for your consideration. I will also send you a copy of the final text of the draft Directive as soon as it is available.

The most significant changes to the text are outlined below.

Article 2 Definitions — The EP proposed that a definition of sex tourism be added to this Article However, because their proposed definition was unclear and. in terms of the Directive as a whole did not have a function will not form part of the definitions. The final outcome is however likely to result in a stronger provision Article 19a requiring Member States to act to prevent or prohibit activities which support or are part of sex tourism in addition to a rectal explaining the phenomenon of sex tourism and the need for the EU as a whole to tackle this phenomenon. We are content with this as we consider sex tourism to be a serious matter which can only be tackled through international cooperation.

Articles 4-6 (Offences and penalties):
With regard to the penalties for the offences in Articles 4 to 6 the EP proposed to require Member States to provide for fines in conjunction with minimum maximum terms of imprisonment and higher levels of penalties than those endorsed by the Council in December. Negotiations have highlighted that Member States are generally content with the levels of penalties agreed in December however there is a willingness to compromise with the EP and raise penalties in a couple of areas The UK has high levels of penalties for these offences and we expect our existing framework of offences to be able to meet the sentencing obligations.

Fines are unlikely to be included in the operative text but the desirability of Member States including fines as a penalty alongside periods of imprisonment is likely to be included in the recitals. Our law already permits fines to be imposed for these offences and it is therefore acceptable to the Government.

There is also an ongoing discussion between the Member States and the EP about the need for the solicitation offence in Article 6 to include offline solicitation and situations where an offender solicits pornographic pictures from a child without actually meeting them. As these situations are already covered by UK legislation, including through an attempts offence in the case of attempting to get an indecent photograph of a child the Government has been flexible on this and can accept this. However, this is not the case for all Member States and negotiations continue in an effort to resolve this.

Article 8 (Consensual sexual Activities) — There have been some textual changes to Article 8 which enables Member States to exempt certain consensual sexual activities from the offences, These changes have not changed the scope of these exemptions, which we believe are important for children over the age of consent, nor fettered Member State discretion in this area so the Government is content with the changes.

Article 9 (Aggravating Circumstances) — The EP originally proposed a number of new aggravating circumstances for inclusion in this Article. It is now likely to include an aggravating feature of ‘a state of physical or mental incapacity’ which already exists in the Sentencing Guidelines produced by the Sentencing Guidelines Council. The Article will make clear that the consideration of any aggravating feature remains a matter for the courts in any particular case.

Article 10 (Disqualifications) — The EP sought to broaden the requirements around the exchange of information concerning criminal records and disqualifications from working with children to some voluntary activities, and also suggested that Member States introduce registers of sex offenders. It is unlikely that Member States will accept the requirement for a sex offender register in the operative text but there is now a common view that the exchange of information between Member States concerning criminal records and disqualifications from working with children should be extended to include some voluntary activities. Whilst the Vetting and Barring Scheme for England and Wales has been under review it will continue to cover some voluntary activities and the notification requirements for sex offenders set out in Part 2 of the Sexual Offences Act 2003 meet the suggestion of a sex offenders register. The Government is content with this solution.

Article 10a (new Seizure and confiscation) The EPs proposition to require Member States to be able to seize and confiscate the proceeds of child sex offences is one which we and other Member States agree to, We are content with this approach which already exists under our legislation. The EP would also prefer a recital to suggest that Member States encourage the use of confiscated assets for victim support, Member States are opposed. as we, like the other States. prefer the recital to remain silent on low the proceeds are used.

Article 15 (Reporting suspicion of sexual exploitation and abuse) — The EP originally proposed a number of amendments to provide for rules on training, child friendly awareness measures, hotlines and other tools for preventing criminal offences against children. Many of these measures already exist in Member States, although in some cases they are provided by the private sector or Non-Government Organisations. A new separate Article that requires Member States to take 'appropriate measures'. such as education and training, to discourage sexual exploitation is likely to appear in the final text, rather than be included in Article 15. The Government is content with this suggestion, as preventing these crimes is a high priority, and the obligations proposed by the EP are proportionate and reasonable in this case. The UK already does a considerable amount of work in this area including through the inter-agency work set out in the Working Together to Safeguarding Children guidance.

Article 16 - Whilst the EP proposed broad rules of jurisdiction, including extending extra-territorial jurisdiction over habitual residents without a dual criminality criterion, it is likely that this Article will replicate that already agreed for the Trafficking Directive. Member States will only be required to take jurisdiction over the specified offences if they are committed by one of their nationals anywhere in the world or takes place on their territory. The UK already has extra territorial jurisdiction in respect of UK nationals who commit sex offences against children overseas and can therefore accept this article.

Articles 17-19 (Victim and Witness Protection) - A number of victim protection measures, including particular assistance in cases where abuse was within the family, were put forward by the EP. Some additional support measures, which already exist in the UK for victims or witnesses, have been agreed and will be incorporated in the final text.

Article 21 - The EP proposed changes to the rules on blocking and deleting websites showing images of child abuse and cooperation with third countries. They consider blocking a supplementary tool that may be available but that it should also be subject to legislative and judicial control, transparent procedures and adequate safeguards. We understand the EP amendments to apply only to blocking carried out by the Member State rather than blocking carried out by the industry. Industry in the UK uses blocking to prevent abuse of their systems and disrupt the distribution of this illegal material. The system is self-regulated but supported by Government. Negotiations on this Article continue but we are confident that we have achieved our aim, namely to ensure that the successful UK approach is not affected by this Article. We are disappointed however that the EP is not more supportive of blocking generally.

As I have highlighted, the negotiations on this Directive have been progressing rapidly in the last few weeks and there is a good possibility that the Presidency will be seeking an agreement before the end of their tenure.

Overall we have maintained the flexibility of the Council's agreed text and that it will not impose further obligations to the national criminal justice system.
14 June 2011

Letter from the Chair to Kenneth Clarke

Thank you for your letter of 14 June telling us of proposed amendments to this draft Directive as a consequence of the trilogue negotiations with the European Parliament. We would be grateful if you could write again when the first reading negotiations have completed, summarising any further amendments that have been agreed since your letter of 14 June.
19 July 2011

32679 & 32746: Council Resolution on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings.

Letter from Lord McNally to the Chair

Thank you for your Committee's report of 18 May 2011, about the two Explanatory Memoranda that were deposited in Parliament on 3 May and 16 May concerning drafts of a Council Resolution on a Roadmap on victims' rights. The Committee has recommended that the Roadmap be debated in European Committee B. In that debate, you have asked the Government to provide more information on the probable substance of each of the measures, which the Commission has yet to propose, and on how likely it is that the Roadmap will be followed by further proposals on victims' rights.

On 18 May, the European Commission announced the publication of a package of proposed measures on victims' rights. It contains a draft Directive establishing minimum standards on the rights, support and protection of victims of crime, as outlined at Measure A of the Roadmap: and a draft Regulation on the mutual recognition of protection measures in civil matters, as outlined at Measure C. The Commission have also published a Communication about strengthening victims' rights in the EU. which contains an outline of further measures that they will consider in this area. All of these documents will be deposited in Parliament and Explanatory Memoranda will be submitted about them in the usual way. The UK's opt in will apply to the draft Directive and draft Regulation and I look forward to receiving the Committee's opinions about whether the UK should opt in to them.

Meanwhile, the Hungarian Presidency has indicated that they would like Ministers to adopt the Roadmap at the Justice and Home Affairs (JHA) Council on 10 June and only one further Working Group has been scheduled to discuss them on 26 May. As was outlined in the Explanatory Memorandum of 16 May, the Government is generally content with the direction of the negotiations and as the Commission has already published the two legislative measures proposed in the Roadmap, we would like to be in a position to agree to it at the Council. The timetabling constraints are exacerbated by the upcoming Whitsun recess period which would make it very difficult to schedule a debate before the JHA Council. In addition as the Roadmap is a statement of political intent rather than a legal act, I would like to request, under paragraph 3 (b) of the House of Commons Scrutiny Reserve Resolution, that the Committee waive the scrutiny reserve on this occasion.

The Government would be happy for a debate, ahead of the summer recess, to discuss the Roadmap, the Directive, the Regulation and the Commission's Communication.
20 May 2011

Letter from the Chair to Lord McNally

Thank you for your letter of 20 May, telling us of the publication of further Commission proposals on victims' rights in the EU and asking the Committee to lift the scrutiny reserve on the Roadmap, which is to be adopted at the JHA Council on 10 June.

It is clear that a debate cannot be held before 10 June, and that the Roadmap is a political rather than legislative document to which the opt-in Protocol does not apply. In these particular circumstances the Committee has agreed to lift the scrutiny reserve for the Roadmap to be agreed in Council on 10 June, and relies on paragraph 3b of the scrutiny reserve resolution in doing so.

Thank you also for your helpful suggestion of a combined debate on victims' rights. We will consider it when we report on the Commission's further proposal. We will also consider whether such a debate should take place on the Floor of the House, rather than European Committee.
24 May 2011

RE: 29666 Public access to EU documents

Letter from Lord McNally to the Chair

I am writing to inform the House of Commons European Scrutiny Committee of the Government's policy on the proposed revision of Regulation 1049/2001 on public access to European Parliament, Council and Commission Documents (the Regulation). Furthermore, I wish to respond to your Committee's request for further information on this proposal contained in its report of 7 April 2010. I would like to reassure you that negotiations within the Council have not progressed since then, but nonetheless apologise for the delay in responding to your question.

As there seems to be no prospect of a new Regulation being adopted in the near future, owing to the diverging views about the recast in the European Parliament and Council, the Commission published on 31 March 2011 a proposal to amend the existing Regulation solely to take account of Article 15(3) of the Treaty on the Functioning of the European Union (TFEU). Article 15(3) extends the right of access originally provided by Article 255 of the EC Treaty so it now applies to all European Union institutions, bodies, offices and agencies, although this is limited in the case of the Court of Justice of the European Union, the European Central Bank, and the European Investment Bank to their administrative tasks. The proposed revision of Regulation 1049/2001 (which establishes the rules and procedure for administering the right of access) simply seeks to ensure that the Regulation reflects the expanded right given by Article 15(3). This proposal is entirely distinct from, and is without prejudice to, the wider ongoing recast process.

The Commission's proposal (document 8261/1/11 Rev.1) was deposited in Parliament on 5 April. An Explanatory Memorandum has been sent to Parliament today setting out the Government's position in relation to it. This proposal is a welcome development. I intend to submit a further Explanatory Memorandum to Parliament explaining the Government's position on the wider recast of the Regulation following a meeting of the Council Working Party on Information on 15 April, when the timetable for this process in the light of the Commission's proposal of 31 March should be clearer.

Pending further developments in relation to the recast, I should address the point made in the Committee's report of 7 April 2010, questioning the adequacy of Article 255 of the EC Treaty, now Article 15 TFEU, as a legal base for the proposal by the Commission to pursue an extension of the right of access to EU documents beyond EU citizens or residents. The Government's view is that Article 15 TFEU does not give a right of access to those who are not EU nationals or not resident in the EU. Nor does it provide any power to extend the right of access currently set out in Article 15 so that it could encompass people falling into either of those categories.

We understand the Commission's proposal may have been motivated by the practical difficulties Commission officials encounter in distinguishing between requests that originate within the EU and outside it. Nevertheless, we intend to make clear to the Commission that, we do not think the EU has competence to adopt a regulation giving rights of access to anyone other than EU citizens or residents. We are not opposed to the principle of non-EU citizens getting access to documents under the Regulation, but because we believe that the legal base is flawed in this regard.

The Committee also suggested that a restriction of the right of access solely to EU citizens and residents might be incompatible with the rights guaranteed by the EU Charter of Fundamental Rights. The Government's clear view is that the Charter does not alter the position in any way. Article 42 of the Charter, which concerns the right of access to documents, is limited to "any natural or legal person residing or having its registered office in a Member State" in exactly the same way as Article 15 TFEU. The explanations accompanying the Charter, that are an authoritative guide to its interpretation, confirm that the right in Article 42 is no more than a

restatement of the right under Article 15 TFEU and "is exercised under the conditions and within the limits" set out in Article 15. Furthermore, Article 6(1) TEU is clear that the Charter "shall not extend in any way the competences of the Union as defined in the Treaties." Accordingly, the Charter cannot affect the limits on the powers under Article 15(3) TFEU, nor can it provide the basis for new powers.
12 April 2011

Letter from the Chair to Lord McNally

Thank you for your letter of 12 April, for which the Committee was grateful.

We note that you say there is no prospect of this regulation being agreed in the near future.

We strongly support your interpretation of the scope of Article 15 TFEU, which must restrict right of access to EU nationals or residents.

The proposal remains under scrutiny, pending further developments.
29 June 2011

Council Resolution on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings (32679 & 32746)

Letter from Lord McNally to the Chair

Thank you for your letter of 24 May, agreeing to lift the scrutiny reserve on the Roadmap, under the terms of paragraph 3b of the Scrutiny Reserve Resolution, to enable the Government to agree to it at the JHA Council on 10 June.

A copy of the Roadmap that was agreed at the Council is enclosed. As I highlighted in my Explanatory Memorandum of 16 May, the Government sought to ensure that measure D, about the 2004 Directive relating to compensation to crime victims, does not make any assumptions as to the outcome of the Commission's research regarding the implementation of the Directive and that any further action in this area is only brought forward if it is found to be necessary. I am content that the final version of the Roadmap reflects that approach.

I note that the Committee has requested that the Roadmap; the Commission's draft Directive establishing minimum standards on the rights, support and protection of victims of crime; and the Commissions draft Regulation on mutual recognition of protection measures in civil matters, be debated on the Floor of the House. The business managers have provisionally scheduled this debate to take place on 11 July.
27th June 2011

Letter from the Chair to Lord McNally

Thank you for your letter of 27 June, enclosing the adopted Roadmap.
13 July 2011

DOC 11497/11 DRAFT DIRECTIVE ON THE RIGHT OF ACCESS TO A LAWYER IN CRIMINAL PROCEEDINGS AND ON THE RIGHT TO COMMUNICATE UPON ARREST (32865)

Letter from Nick Herbert to the Chair

Thank you for your report of 6 July 2011 concerning the above-mentioned draft Directive. The Ministry of Justice welcomes the opportunity to debate the opt-in decision on the Floor of the House and a debate is scheduled to take place on 7 September 2011.

The Committee noted the Government's concern that several of the provisions in the proposed Directive contain obligations which are not consistent with national law or practice, requiring a change in national legislation or procedure in order to be transposed; and that the proposal will have financial implications for the UK, particularly for the legal aid budget. These factors will influence the Government's decision on whether to opt in to the proposal. As the Committee is aware, in-line with the Coalition Agreement, the Government approaches legislation in the area of criminal justice on a case-by-case basis, with a view to maximising our country's security, protecting Britain's civil liberties and preserving the integrity of our criminal justice system.

The Committee has asked for an update on negotiations, ahead of the debate. As the Justice Secretary set out in the Explanatory Memorandum of 29 June, the Government will be seeking amendments to a number of provisions in the proposal that we consider would have an adverse impact on the UK's criminal justice systems. At the two official level meetings that have taken place it has become clear that a number of other Member States share our concerns about the practical implications of the proposal on the ability of their criminal justice authorities to investigate and prosecute crimes. At this early stage of the negotiation process, we are still exploring options as to the best way in which our concerns can be met. As set out in the Explanatory Memorandum, these concerns include: the right to have a lawyer present before the police can ask any questions; the right to access a lawyer upon the police carrying out any procedural or evidence gathering act; the limited scope of derogations to delay access to a lawyer or communication with third parties; the lack of any derogation from the right for meetings and communications between a lawyer and client to be confidential; and the potential consequences of articles 10(2) and 13(2) which would fetter the ability of a trial judge to decide on a case by case basis whether evidence should be admissible if obtained in breach of the Directive's provisions.

The Explanatory Memorandum also sets out that we have concerns about the financial implications of Article 4 which would give suspected or accused persons the right to meet with their lawyer face to face. In England and Wales and to some extent Scotland, telephone access to a lawyer is. Provided in cases of low level crime. Individuals detained in custody may prefer this as it can reduce the time spent in custody in cases where it is not possible to provide immediate physical access to a lawyer. We estimate that the cost of providing face to face advice to those who currently receive telephone advice in police stations in England and Wales would range from between £32-34 million per year. The Government's Impact Assessment will be sent to the Committee in due course. The concern about this provision is shared by other Member States and we are currently exploring language which would address this point and allow for the continued use of telephone access in appropriate circumstances. We also have an additional concern which we did not identify in the initial Explanatory Memorandum that the current draft could potentially preclude the use of accredited representatives - these are individuals who have been trained to advise a suspect at the police station but are not qualified lawyers. Accredited representatives are frequently assigned police station work on behalf of law firms and any change to that practice would have resource implications. We are working with others within the Council to find an appropriate solution on this.

Further official level meetings have been scheduled by the Polish Presidency and they intend to seek a General Approach on an amended text at the Justice and Home Affairs Council on 13 and 14 December.
1 September 2011

Letter from the Chair to Nick Herbert

Thank you for your letter of 1 September, updating us on the concerns you have about the above proposal. These will be fully considered in the course of today's debate on the proposal on the Floor of the House.
7 September 2011

DOC 11497/11 DRAFT DIRECTIVE ON THE RIGHT TO OF ACCESS TO A LAWYER IN CRIMINAL PROCEEDINGS AND ON THE RIGHT TO COMMUNICATE UPON ARREST

Letter from Kenneth Clarke to the Chair

The Ministry of Justice last wrote to you about the above mentioned draft Directive, on 1 September 2011, to update you about the progress of negotiations ahead of a debate on the Floor of the House about the UK's decision on whether to opt in to the draft Directive. Following the debate on 7 September 2011 and the deferred Division on 14 September 2011, I am writing to let you know that the Government has decided not to opt in to the Directive at this stage. Parliament will be informed of the Government's decision by a Written Ministerial Statement when it next sits in October.

As Jonathan Djanogly set out at the debate on 7 September, the Government agrees, that in principle, a Directive in this area has the potential to be of great benefit to UK citizens who become suspects in criminal proceedings in other Member States. We also believe that such a Directive has the potential to build greater trust and confidence, among the competent authorities of all EU Member States that judgments handed down by courts in other Member States, which may be expected to recognise, have been made on the basis of sound procedural standards. However, given the extent of our concerns with the ext published by the Commission, which we have set out in earlier correspondence, we cannot at this early stage of the negotiations be entirely sure that all of them will have been resolved in the final instrument, notwithstanding the positive approach that the Polish Presidency is taking to the negotiations.

Because of the value we attach to ensuring fair trial rights across the EU, we intend to work very closely with our European partners to develop a text which takes greater account of the practical realities of the investigation and prosecution of crime and reflects the flexibility which Member States need in order to meet the requirements of the ECHR in a way which is consistent with the nature of their justice systems. If our concerns about the initial draft of the Directive are taken into account and satisfactorily dealt with during the negotiations, we will give serious thought to whether we should apply to opt in to it once adopted. We will consult Parliament about any decision to apply to opt in to the final text.

A copy of the Government's preliminary Impact Assessment of this proposal in enclosed. We will continue to update you about the progress of negotiations. Further official level meetings have been scheduled by the Polish Presidency. Officials will attend those meetings with a view to influencing the negotiations to ensure that our concerns with the current text are resolved. The Presidency have said that they intend to seek a General Approach on an amended text at the Justice and Home Affairs Council on 13 and 14 December.
20 September 2011

Letter from the Chair to Kenneth Clarke

Thank you for your letter of 20 September telling us of the Government's decision not to opt into this draft Directive. Given the concerns you have expressed in previous correspondence, and which were debated on the Floor of the House, we applaud this decision.

We would be grateful to be kept informed of significant developments in the negotiations and of any reconsideration of the opt-in decision by the Government.
12 October 2011

DRAFT DIRECTIVE ON THE RIGHT OF ACCESS TO A LAWYER IN CRIMINAL PROCEEDINGS AND ON THE RIGHT TO COMMUNICATE UPON ARREST (11497/11) (32865)

Letter from Kenneth Clarke to the Chair

Thank you for your letter of 12 October regarding the Government's decision not to opt in at this stage to this draft Directive and for your support for the Government's position.

You note that the Government may yet decide to opt in to the proposal once it has been adopted and ask whether there is any departmental guidance which I can share with the Committee on factors, beyond those in the Coalition Agreement, that the Government should take into account in weighing up an opt in decision.

The Coalition Agreement states that opt in decisions on legislation in the area of criminal justice will be made on a case by case basis. The Government will take account of specific factors raised by an individual proposal, such as the effects on law and practice in deciding whether to opt in to it, in line with the commitments to maximise our country's security, protect Britain's civil liberties and preserving the integrity of our criminal justice system. We also assess the negotiability of any concerns that we have. These factors are shared with the Scrutiny Committees in correspondence about each proposal, and if applicable, during debates in Parliament. As you are aware, the Government is particularly concerned about the potential adverse impact that this Directive, as published by the Commission, would have on the investigation and prosecution of crime. We are also concerned about the potential financial implications of the Directive, particularly with regard to the provision that would prevent us from providing publicly funded legal advice over the telephone in police stations.

You asked me whether the Court of Justice of the EU (ECJ) would have jurisdiction over the UK's implementation and application of this Directive, were we to opt in. The ECJ would have jurisdiction, which would be limited to the interpretation and correct implementation of the Directive.

You asked to be kept informed of any significant developments in the negotiations. A number of Member States share our concerns with the Commission's proposal and we joined France, Ireland, Belgium and the Netherlands in writing an open letter to the European Parliament, Council and Commission. This letter set out our support for the general principles underlying the Directive, but made clear our view that the Directive as proposed by the Commission goes beyond the requirements of the European Convention on Human Rights on which the Directive is based and, in doing so, fails to strike an adequate balance between the interests of the defence and the
investigative process.

At the last Justice and Home Affairs Council on 28 October, the Presidency updated Ministers on the progress of negotiations conducted at official level and highlighted the main points for future discussion, the first of which relates to the situations in which access to a lawyer should be provided. There is broad agreement that access to a lawyer should be provided when a person is questioned at a police station and when a person is the subject of criminal proceedings before a court. However, agreement has yet to be reached about whether the rights should be afforded in other situations, such as where a person has been stopped in the street and is asked to respond to questions or during procedural or evidence-gathering acts.

The Presidency also updated the JHA Council about the issue of remedies for breaches of the rights contained in the Directive. The Commission's proposal would prevent statements or any other evidence obtained in breach of the right of access to a lawyer being used as evidence against the person concerned, unless the use of such evidence would not prejudice the rights of the defence. The Presidency stated that most Member States could not accept this provision and have expressed the view that the judiciary in individual Member States should retain discretion to decide on the admissibility of such evidence. Work is ongoing to find an acceptable way of addressing this issue in the text.

The Presidency also updated Ministers on a question that some delegations have posed about whether the Directive requires the provision of a lawyer in all of the circumstances outlined in the Directive, or whether, at least in some parts of the Directive, the requirement is simply that a suspect or accused person should not be prevented from contacting a lawyer. Our reading of the Directive, as published by the Commission, is that it would require the State to provide a lawyer.

I will update you regarding any further significant developments in the negotiations.
7th November 2011

Letter from the Chair to Kenneth Clarke

Thank you for your letter of 7 November, answering in full the questions we asked. We were most grateful.

We were interested to read about the open letter the UK and four other Member States had sent to the EU institutions, and would like to see a copy of any response that is received.

In the meantime, we trust that you will keep us informed of developments in the negotiations which may lead to the Government changing its view on whether to opt into this Directive.
23 November 2011

INITIATIVE FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE EUROPEAN PROTECTION ORDER

Letter from Lord McNally to the Chair

I am writing to inform the Committee of the latest developments on the European Protection Order (EPO) and seek agreement in principle to release this proposal from scrutiny.

The Polish Presidency is seeking a rapid conclusion of the legislative proposal. There is a CATS (senior official level) meeting scheduled on the 6 September which will discuss the EPO. It will then be submitted to Coreper (Ambassador level) with a view to swift finalisation of the Directive. There is an expectation that it will feature on the JHA Council agenda on the 23 September. This means progress may have been made before Parliament returns from recess. That is why I am, exceptionally, asking you to consider releasing this draft Directive from scrutiny now. I also enclose the latest draft of the text for this proposal.

Your Committee has been supportive of the stance we have taken over legal base and the efforts we have made to resolve the issue of legal base and the eventual solution found; the original draft Directive has been limited to criminal matters whilst the Commission have brought forward a draft Regulation on mutual recognition of protection in civil matters.

The fact that the UK stood firm on the issue of legal base and formed part of a blocking minority was a major factor in achieving this solution and we are pleased at the outcome.

This has been a dossier where our substantive concerns have chiefly focused on technical legal base issues. At a very early stage of negotiations we achieved amendments needed on key areas such as jurisdiction, the roles of the issuing and executing State and the rights of the person causing danger. We are now content with the approach adopted in the Directive which sees the State responsible for executing the EPO able to take a measure under its own national law in order to give effect to the EPO (Article 9bis). Originally the proposal stated that the issuing State retained jurisdiction for the protection measure in the executing State. This did not accord with
the UK's approach to territorial jurisdiction. We worked with other Member States to remedy this and have found an effective solution that would work with our system.

In early drafts of the Directive there was also nothing to guarantee that the person causing the risk would know about the order against them. Again, during negotiations, we worked to resolve this and now there are safeguards in the text At Articles 5(3) bis and 8(2).

There is an outstanding question about whether negotiations on this Directive should be closed down and the final text agreed whilst the Regulation on mutual recognition of protection in civil matters is in its infancy, given their interrelation. The Government's initial view was that there was a logic to keeping both these instruments open, rather than finalise the criminal EPO Directive, so that there will be an opportunity to assess it alongside the Commission's civil Regulation. However it has become apparent there is little appetite for this from the European Parliament, the Commission or from the majority of Member States. Indeed a number of Member States have expressed concern that keeping the criminal Directive open may risk undoing many of

the concessions gained from the European Parliament to make this instrument workable and suitable for the differing systems of protection found throughout Europe.

Given this context, we have considered the most recent texts and concluded that although some variation is inevitable given the difference in the subject matter and particular sensitivities surrounding criminal matters, the existing differences are not such as to demand that the criminal instrument be kept open at this stage. The two instruments are not interdependent (for example, they do not both apply to each case, and each represents a complete scheme without reference to the scheme of the other). Both require recognition in a similar manner in the executing State, and allow a form of adaptation of the order in the legal system of the executing State to enable protection which is as closely equivalent as possible to the original order. Both contain protections for defendants' rights which are broadly equivalent. Because one applies to protection measures in "civil matters" and the other to such measures in "criminal matters", they combine together to ensure as wide a coverage of victims in the European Union as is feasible. During negotiations on the civil instrument officials will pay close attention to ensuring that coverage of victims in the EU is kept as comprehensive as reasonably possible; on ensuring that the protection provided to victims is sufficiently equivalent to that given in the criminal instrument; and that defendants' rights are protected and an appropriate equivalence with the criminal measure retained there too.

In response to the concerns of the UK and other Member States, the Polish Presidency has drafted a declaration which is found at Annex II of the Directive. This sets out a commitment to ensuring that the civil and criminal instruments will complement each other. I support the inclusion of this declaration.

Given that the UK has achieved the concessions and revisions required to the text, and a solution has been found to the legal base issue, I would ask the Committee to agree in principle to release this instrument from scrutiny. I appreciate that the text we are asking you to clear is not the formal version for adoption. The text is, however, in a very advanced state and few changes are anticipated.

If you are minded to clear this Directive from scrutiny, we will only agree the text if there are no further radical alterations and it accords with the position the UK has been taking throughout negotiations on legal base. If for any reason adoption is not sought until Parliament returns from recess we will, of course, put the final version of the text before you for clearance.

I hope that this letter provides you with sufficient assurances to clear the Directive from scrutiny.
24 August 2011

Letter from the Chair to Lord McNally

Thank you for your letter of 24 August, asking the Committee to lift scrutiny on the above proposal in time for adoption at the next JHA Council on 23 September. A copy of the revised draft is enclosed with you letter, as opposed to being deposited in Parliament.

The Committee cleared the previous iteration of this proposal from scrutiny on 9 March; there is therefore no document upon which scrutiny can be lifted. May I suggest you deposit the draft enclosed with your letter in time for it to be considered at next week's meeting of the Committee.
7 September 2011

DRAFT DIRECTIVE ON ACCESS TO A LAWYER IN CRIMINAL PROCEEDINGS AND ON THE RIGHT TO COMMUNICATE UPON ARREST (11497/11) (32865)

Letter from Lord McNally to the Chair

Thank you for your letter of 23 November, addressed to the Secretary of State for Justice, about the *above* mentioned Directive.

You asked to see a copy of any response that has been received to the open letter that the UK and four other Member States sent to the EU institutions on 21 September about the Directive. In that letter, which is enclosed, we set out our support for the principle of having a Directive in this area, but highlighted our concern about the way in which a number of provisions in the Commission's draft go beyond the requirements of the European Convention on Human Rights. This is significant because the Commission claim in their impact assessment that their proposal reflects those requirements and does not go further. The letter also highlighted why we consider that the Commission's proposal fails to strike a sensible balance between the interests of the defence and the wider interests of justice.

We have not received a reply to the letter from any of the EU institutions, however, an open letter in response to the points raised in it has been circulated by a consortium of NGOs who support the Commission's proposal I enclose a copy of that letter.

In terms of an update on negotiations, reasonable progress has been made on this dossier under the Polish Presidency, who have done their best to address some of the difficult policy issues. The current draft is more aligned to ECHR case law in that the right of access to a lawyer would arise before official police interview rather than upon "any questioning", which could encompass simple questions posed in the street. The *provision* on access to a lawyer during procedural or evidence gathering acts has also been significantly narrowed and a much larger margin of discretion is left to Member States. The right for lawyers to check detention conditions has been removed and the right to communicate with a third party has been changed to the right to inform a third party of arrest. The requirement to have a lawyer in the requesting country in European Arrest Warrant proceedings was opposed by a majority of Member States so has been dropped from the current text. The draft Directive allows for some very limited derogations from the principle of confidentiality between a lawyer and a suspected or accused person, and the articles on admissibility of evidence have been significantly modified in order to avoid fettering the ability of the judge to make decisions on admissibility having regard to overall fairness of proceedings.
We are pleased with the direction of travel of the negotiations but still have some concerns about the content of the Directive, including the narrowness of the derogations from access to a lawyer. Whilst access to a lawyer is a key right of the defence, there are a number of circumstances where it may be necessary to derogate from a suspect or accused person's right to have access to a lawyer. These circumstances include preventing interference with or harm to evidence, where awaiting the arrival of a lawyer would cause unreasonable delay to the process of investigation, or would be necessary to prevent crime. A state of play is on the agenda for the December Council and I enclose the current text.
13 December 2011

Letter from the Chair to Lord McNally

Thank you for your letter of 13 December. We were grateful for your reply to our question on the letter the UK and other Member States sent to the EU institutions on 21 September on the Directive; and also for your update on the progress of the negotiations.

We look forward to hearing from you again when there are further significant developments to report.
18 January 2011

PROPOSAL FOR A DIRECTIVE ESTABLISHING MINIMUM STANDARDS ON THE RIGHTS, SUPPORT AND PROTECTION OF VICTIMS OF CRIME (10610/11)

Letter from Kenneth Clarke to the Chair

Thank you for your Committee's report dated 7 December 2011, in which you agreed to waive the scrutiny reserve on this proposal. I am very grateful. I am writing to provide you with a further update on the Directive.

The text on which a General Approach was agreed at the Justice and Home Affairs Council on 14 December contained a number of changes from the previous version shared with your Committee. The main changes are detailed below.

Article 5 has been clarified by a new recital which permits us to take into account factors such as the severity or nature of the crime in determining whether to offer the notification requirements in the Article. It also states that the notification requirements should not apply in the case of petty crime where the possibility harm to the victim is slight. This brings the requirement closer to current practice across the UK.

Amendments have also been made to Article 10 and the recitals to limit the right to review where the highest prosecuting authority has taken the decision not to prosecute. Moving this from a recital to the operative reflects the importance of this issue for many Member States.

There has been a small amendment to Article 11 on the right to safeguards in the context of restorative justice services. The amendment clarifies that there are cases which are not appropriate to be referred to such services. However, where a case if referred, the safeguards for victims in the Article will apply.

Article 13 has been limited through further amendment to the recitals to clarify that expenses need not be provided where the victim makes a statement of a criminal offence. The aim of the recital further clarifies and limits Member States' obligations in respect of expenses.

Article 25 on the co-operation and co-ordination of services has been amended to clarify the appropriate action which Member States may take to facilitate co-operation between Member States to improve victims' access to their rights as provided under the Directive and under national law.

I will ensure the Committee is kept updated as we enter trilogue negotiations.
20 December 2011

Letter from the Chair to Kenneth Clarke

Thank you for your letter of 20 December telling us of the changes to the text on which the General Approach was agreed. None of them appears to have compromised the Government’s vote in favour of the General Approach.

We look forward to being kept informed only when significant changes to the text may occur as a consequence of the first reading negotiations with the European Parliament.
18 January 2012

DEPARTMENT FOR TRANSPORT

11990/08 (30264) PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL CONCERNING THE RIGHTS OF PASSENGERS WHEN TRAVELLING. BY SEA AND INLAND WATERWAY AND AMENDING REGULATION (EC) NO 2006/2004 ON COOPERATION BETWEEN NATIONAL AUTHORITIES RESPONSIBLE FOR THE ENFORCEMENT OF CONSUMER PROTECTION LAWS.

Letter from Mike Penning to the Chair

I am writing to inform you of the progress that has been made on the proposed maritime passenger rights Regulation, including the outcome of the European Parliament's second reading of the dossier on the 6th July 2010.

During the second reading process the proposed Regulation was subject to intense negotiations between the European Parliament, the Presidency (on behalf of the Council of Ministers) and the Commission, and a compromise package was reached between Member States and the European Parliament. The key elements of the package are:

(i) Scope: the Regulation will not apply to ships certified to carry up to 12 passengers, ships with a crew responsible for the operation of the ship of not more than three persons or where the distance of the overall passenger service is less than 500 metres, one way. The Regulation will also not apply on excursion and sightseeing tours or historical passenger ships. Nothing in the Regulation imposes obligations to modify or replace ships, infrastructure, ports and port terminals. In addition, the Recitals explain the aim of the Regulation is not to interfere in commercial business-to-business relationships concerning the transport of goods.
(ii) Disabled persons: the Regulation prohibits carriers and operators from refusing to issue, or making an

additional charge for, a ticket or reservation to a disabled person and person with reduced mobility on the grounds of disability or of reduced mobility. The Regulation permits a carrier however, to refuse to embark a passenger for justified safety reasons. The Regulation sets the framework for the denial of embarkation, the requirement for publicly available access conditions and quality standards, as well as providing for the right to assistance and the conditions under which such assistance is provided.
(iii) Disrupted travel: the Regulation establishes the passenger's right to assistance in case of cancelled or delayed departures. When delayed for more than 90 minutes, passengers shall be offered free of charge snacks, meals or refreshments. When such delays occur, passengers are entitled to be re-routed to the final destination or reimbursed the ticket price. Where an overnight stay becomes necessary, the carrier shall offer passengers adequate accommodation free of charge. For each passenger, the carrier may limit the total cost of accommodation to €80 per night for a maximum of three nights. The Regulation also lays down the right, in certain circumstances, to compensation in case of delay in arrival. Neither accommodation nor compensation is available where the cancellation or delay is caused by weather conditions endangering the safe operation of the ship.
(iv) Complaints and enforcement: the Regulation requires industry to set up an accessible complaint handling mechanism and requires Member States to designate a new or existing body or bodies responsible for the enforcement of this Regulation.
(v) Entry into force: the Regulation will apply 24 months after the date of publication in the Official Journal. If the Council of Ministers votes in favour of the Regulation, it is likely to apply from late 2012.
The Council of Ministers will now have to confirm the agreement reached with the European Parliament for this Regulation to be formally adopted, and it is expected that the compromise will be acceptable to Member States primarily because of the modest nature of the changes to the scope (see point (i) above); the cap on the carrier's liability for disrupted travel (see point (iii) above) which takes account of events such as the recent volcanic ash incident; and the 24 months entry into force date. Also, as part of the overall compromise package, it is worth noting that consistency with the aviation industry in respect of the amount of time that must pass before a passenger can expect assistance (in the form of refreshments, reimbursement and re-routing) is no longer considered to be a major sticking point for the majority of Member States. So the relevant provisions have now been reduced to 90 minutes, as opposed to the 120 minutes that was previously agreed by the Council of Ministers for the purposes of the Common Position.
19 July 2010

Letter from the Chair to Mike Penning

The Committee has asked me to thank you for your letter of 19 July 2010 reporting the outcome of the European Parliament‘s second reading of this draft Regulation and the likely next stages. The Committee was grateful for this information.
8 September 2010

16933/08 (30255) COM (08) 817: PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE RIGHTS OF PASSENGERS IN BUS AND COACH TRANSPORT AND AMENDING REGULATION (EC) NO. 2006/2004 ON COOPERATION BETWEEN NATIONAL AUTHORITIES RESPONSIBLE FOR THEENFORCEMENT OF CONSUMER PROTECTION LAWS

Letter from Norman Baker to Chair

I am writing to update you on progress with negotiations on the proposal for an EU Regulation on bus and coach passenger rights, including the outcome of the European Parliament's second reading.

As you know, political agreement on a common position was reached at the December Transport Council in 2009. The Spanish Presidency held a number of tripartite meetings with the European Parliament (EP) and the Commission to try to reach a compromise that would enable a second reading deal to be reached. However, the EP plenary second reading on 6 July adopted a text that is unlikely to be acceptable to the majority of Member

States. The Belgian Presidency has not yet ruled out the possibility of a second reading deal, and will consider the options, but they feel that conciliation is likely.

The key issues for the EP have been to:
• remove the ability for Member States to exempt regional (and therefore rural) bus services;
• remove the ability for Member States to exempt all domestic services for 5 years (which can be renewed twice);
• significantly increase the number of provisions that would automatically apply to urban and suburban services;
• re-introduce strict liability and advance payments; and
• revise the provisions on compensation and assistance in the event of delays and cancellations, and the rights of disabled persons and persons with reduced mobility (PRM).
In order to secure minimal changes to the liability provisions, Member States have been looking to compromise on scope, although the majority have sought to retain the ability for Member States to exempt regional services. Without this exemption rural bus services would fall in scope of the Regulation, and the cost of complying with some of the provisions could make these marginal, but socially necessary, services unviable to run. The EP wants the following articles to automatically apply to urban and suburban services, in addition to those set out in the common position:
• compensation in the event of accidents is determined in accordance with national law, but if it is capped certain minimum limits apply (article 7);
• the provision by carriers of reasonable assistance to meet passengers' immediate practical needs following an accident (article 8);
• carriers and terminal managing bodies to establish or have in place non-discriminatory access conditions for the transport of disabled persons and persons with reduced mobility (article 11 (1));
• provision of assistance free of charge to disabled persons and persons with reduced mobility at terminals designated by Member States (article 13(1));
• disability awareness training for personnel of carriers and terminal managing bodies who deal directly with the travelling public (article 16);
• compensation in respect of damage caused to wheelchairs and other mobility equipment when assistance is being provided (article 17(1) and (2));
• provision of information in the event of cancellation or delay in departure from terminals (article 20);
• right to travel information throughout the journey (article 23);
• provision of information on passenger rights under the regulation (article 24 - this was added during discussions with the Rapporteur);
• carriers to have a complaints handling mechanism (article 25);
• ability for passengers to make a complaint and the timescales attached to the submission of complaints (article 26); and
• the requirement for a national enforcement body (article 27).

To safeguard the common position on liability and the ability to exempt rural services, we adopted a certain level of flexibility in our approach to the number of articles that would apply to urban, suburban and regional services, and on the length of the exemption for all domestic services. However, the likelihood of conciliation means there is an increased risk of a revised text which would be less acceptable to us than the common position.

Whilst we support the equitable treatment of disabled people, we have resisted proposed EP amendments to the provisions concerning disabled people and people with reduced mobility, where they would place unreasonable requirements on the industry. In respect of other amendments regarding passenger rights in the event of cancellation and delay, the provision of information, and complaints we will seek to ensure that any proposed amendments are proportionate and practical' in their application and do not impose a disproportionate burden on businesses.

I will, of course, continue to keep your Committee informed of the progress of this proposal through the further stages in negotiations.
22 July 2010

Letter from the Chair to Norman Baker

The Committee has asked me to thank you for the account you gave it of developments on this draft Regulation in your letter of 22 July 2010. It has noted the risks to the Council's common position and encourages the Government to be robust in supporting the Presidency in obtaining an outcome that matches UK interests.
8 September 2010

6257/09 (30514) DRAFT REGULATION AMENDING COUNCIL REGULATION (EC) NO 1321/2004 ON THE ESTABLISHMENT OF STRUCTURES FOR THE MANAGEMENT OF THE EUROPEAN SATELLITE RADIO-NAVIGATION PROGRAMMES.

Letter from Theresa Villiers to the Chair

I understand that when your Committee previously considered this proposal you cleared it from scrutiny, but were aware that there were some issues still to be resolved. I would therefore like to bring you up to date with further progress made in the negotiations, including the outcome of consideration by the European Parliament.

Update on the Draft Regulation

As you may recall, the Spanish Presidency had proposed a number of compromises aimed at reaching agreement between the European Parliament and Member States on several outstanding issues, and which were discussed by the Member States at working group level. The resulting proposed compromise text was considered by the European Parliament at its plenary first reading on 14-17 June, where it was adopted without further amendment. It will now be reviewed by Jurist-Linguists, and is then expected to be adopted at Council.

Update on the outstanding areas

Security Accreditation

The draft regulation proposes that a new Security Accreditation Board (SAB) should be set up. The SAB will be responsible for the accreditation of all security aspects of the system and receivers capable of decoding the encrypted Public Regulated Service (PRS) signal. Accreditation will be done in a context of collective responsibility for the security of the Union and the Member States. All members of the SAB will be professionals in the field of
accreditation and have appropriate security clearance for the tasks.

The Spanish Presidency and the Member States had concerns about a proposed amendment from the European Parliament to remove the reference stating that the Security Accreditation Board for European GNSS systems must be an autonomous body that takes its decisions independently. The compromise accepted by the European Parliament reinstates the status of the Board and reads - 'accreditation decisions shall be taken independently of the Commission, without prejudice to Article 3, and of the entities responsible for implementing the programmes. As a result, a security accreditation authority for European GNSS systems shall be, within the Agency, an autonomous body that takes its decisions independently. '

The Spanish Presidency compromise also proposed that the Accreditation Board should adopt opinions by a majority of three quarters of the representatives of the Member States. All Member States took the view that such opinions should be adopted via majority voting, and the text now reflects this.

The role of the Galileo Supervisory Authority

You may recall that the Member States had agreed that the weight of the Commission's vote on the Administrative Board of the GSA should be limited to one vote for each of its five representatives, and that although the Commission were prepared to accept this in return for 'outright veto' on a number of 'project manager' roles, there was a subsequent proposal by the EP that the Commission be given 40% of the vote. In subsequent negotiations the EP accepted the views of the Commission and Member States and agreed to the

original proposals, thus the Commission will therefore have one vote for each of its five Board members. Decisions regarding the adoption of the work programme for the Agency and the exercising of disciplinary authority on the Executive Director will not be taken without a positive vote of the representatives of the Commission.

Involvement of the European Parliament

As you may also recall, the issue of the appropriate level of European Parliament involvement on the GSA Administrative Board had been the subject of lengthy negotiations with the EP, who wanted to have three representatives to sit on the Board as observers. The Spanish Presidency had put forward a compromise which would give the Parliament one representative on the board without voting rights. Member States considered this to be an acceptable compromise. The EP will not, however, be represented on the Security Accreditation Board.

Next steps

Following the review of the text by Jurist-Linguists it is expected that the proposal will be adopted at Council in the next few weeks. I have asked officials to continue to work closely with HMT, FCO and the UK Space Agency, other departmental colleagues and Member States with a view to ensuring that the Galileo programme yields value for money. We will
also resist proposals for additional funding for the project.
28 July 2010

Letter from the Chair to Theresa Villiers

The Committee has asked me to thank you for the account you gave it of the outcome on this draft Regulation in your letter of 28 July 2010.
8 September 2010

15469/09 (31113): PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON INVESTIGATION AND PREVENTION OF ACCIDENTS AND INCIDENTS IN CIVIL AVIATION

Letter from Theresa Villiers to the Chair

I am writing to bring your Committee up to date with the latest progress in the negotiations for this proposed Regulation, and in particular the prospects for a first reading deal between the Council and the European Parliament.

I am aware that the previous Government wrote to you on 4 March to give your Committee an early indication of the views of respondents to the public consultation, ahead of the agreement of a general approach at the 11 March Transport Council. The Government's formal response to the public consultation on the proposal has now been published, and a copy is attached. Respondents broadly supported the proposal to update legislation on prevention and investigation of civil aviation accidents and incidents, although some expressed concerns on specific details in the Commission's proposal. In general, respondents supported:

• the establishment of a Network of civil aviation safety investigation authorities;
• the view that EASA should have a role in accident investigations albeit that that role needs careful delineation from independent accident investigators;
• adequate protection of sensitive safety information from inappropriate use or disclosure;
• an accurate (rather than speedy) production of a passenger list in the event of an accident; and
• the production of a national plan to provide assistance to air accident victims and their relatives.

On 1 June, the European Parliament TRAN Committee adopted its report on the proposal, and proposed a number of amendments, including:

• a prescriptive approach to the Network including the creation of a Network Coordinator role over and above that of a Network Chair;
• various amendments incorporating aspects of aviation security matters and judicial proceedings, thereby extending the scope of the Regulation beyond its focus on accident and incident investigation to those areas;
• the use of sensitive safety information in judicial proceedings, without provisions pertaining to national law; and
• prescriptive provisions on common principles governing national level emergency plans.

Following this, there were a number of technical trilogue discussions between the Spanish Presidency, European Parliament and European Commission with a view to seeking agreement at "first reading". I am happy to be able to report that UK input into these discussions successfully secured the following key provisions in the text:

• avoidance of the creation of a centralised European agency on accident investigation and instead confirmation of the light touch Network to formalise existing cooperation between accident investigation authorities - it will have no legal personality, will be limited to an advisory and coordination role and will have a chair elected from its accident investigation authority membership;
• recognition and protection of the independence of accident investigation authorities in the conduct of investigations from other interested authorities e.g. national aviation authorities, EASA, State judiciary;
• facilitation of EASA's involvement as an "advisor" in an accident and incident investigation, subject to the scope of its competence and where such involvement does not create a conflict of interest with its regulatory role or inhibit the independence of the national accident investigation authority;
• safeguards on the protection of sensitive safety information gathered in an investigation thereby ensuring the information sources are not compromised and industry can continue a system of "open reporting" of all accidents and incidents;
• subject to appropriate safeguards, providing EASA and national aviation authorities with increased access to occurrence reports stored in a European central repository to facilitate EASA's analysis of safety information and help it develop future strategy;
• in the event of an accident, the provision to accident investigation authorities of timely and validated lists of all persons and dangerous goods on board; and
• ensuring that all Member States establish at national level appropriate civil aviation accident emergency plans, with scope to recognise existing airport emergency planning, and which include the provision of assistance to victims of air accidents and their families.

The European Parliament will consider the proposed first reading text at its plenary first reading of the dossier in September. It is expected that the proposed text will be acceptable both to the Parliament and to the Member States, and that agreement will therefore be reached at Council soon after the plenary.

I will, of course, continue to keep you informed of any further developments.
22 July 2010

Letter from the Chair to Theresa Villiers

The Committee has asked me to thank you for the account you gave it of developments on this draft Regulation in your letter of 22 July 2010.
15 September 2010

11857/08 (29851) PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING DIRECTIVE 1992/62/EC ON THE CHARGING OF HEAVY GOODS VEHICLES FOR THE USE OF CERTAIN INFRASTRUCTURES

Letter from Norman Baker to the Chair

I am writing as Duty Minister on behalf of Mike Penning, to bring your Committee up to date with developments on this proposal, as promised in Secretary of State Philip Hammond's recent letter to you on Transport Council business during the Belgian Presidency. The Presidency now intends to seek political agreement on the proposal at the Transport Council on 15 October.

Background
As you may recall, Directive 1999/62/EC, amended by 2006/38/EC commonly known as the Eurovignette Directive - governs the calculation of tolls and road charges for goods vehicles over 3.5 tonnes, requiring that levels of charges should reflect the cost of providing road infrastructure and setting maximum rates for daily and other time-based charges. In 2008, the Commission brought forward proposals to amend the Directive further, which would permit a wider range of externalities - including in particular congestion - to be taken into account when setting charges, and also aimed to clarify the position on the hypothecation of tax revenues.

Current state of negotiations
Neither the Swedish Presidency in the second half of 2009 nor the Spanish Presidency in the first half of 2010 made any significant attempt to take the proposed amendments forward. However, the Belgian Presidency announced that reaching agreement on the proposals would be a priority and has proposed a compromise.

Negotiations in Working Group and Coreper have been constructive and we believe that there is a realistic prospect of political agreement being reached at the Council.
The most important aspect of the Belgian compromise is the removal of earmarking from the Directive. This would be a major step forward which we warmly welcome. We still have some concerns about the current compromise text, which recommends using revenues for transport purposes using text similar to that in the Emissions Trading Scheme Directive. The Presidency has indicated that it wants to agree the text at the Council meeting.
On congestion issues, the Presidency has proposed that Member States should be able to vary time-based charges in urban and other sensitive environments within the overall cap set by the methodology for calculating charges. The United Kingdom has hitherto argued that, as a matter of principle, congestion impacts should be included within the methodology for calculating charges, in line with the principle that the polluter should pay. However we believe that the Presidency compromise is one that we could live with, as it would still allow considerable flexibility to reflect congestion costs in any future charging regime.

The Belgian compromise also includes:
• A proposal that Member States should be permitted to exempt vehicles under 12 tonnes from charging within the rules of the Directive. This recognises the fact that a negligible proportion of international goods traffic is carried out by smaller vehicles. We believe this proposal should be welcomed both in principle and on the grounds that it gives national governments greater flexibility to establish their own charging rules
• New proposals on delegated powers, greatly restricting the powers of the Commission to make changes to the annexes to the Directive using delegated acts. In particular it will remove the power for the Commission to propose increases to the minimum levels of annual vehicle taxation set out in Annex I of the Directive, and we understand that it is likely to remove the powers to use delegated act to increase the maximum rates in Annex II and substitute an automatic indexation of the rates

Both of these are important steps forward, which we welcome. The latter in particular serves to push back the boundaries of the Commission's competence in an area where we have real concerns.

We have also pressed the case for increasing the maximum daily user charge rate to €15 from the current €11, allowing Member States greater flexibility to set charges. So far we have received little support on this but we intend to continue pressing the case.

We remain concerned about the legal base. We continue to believe as a matter of principle that the proposals, insofar as they deal with taxation, should be dealt with on the basis of unanimity. However, the current proposals are based on the assumption that distance-based charges are charges and not taxes, and that therefore the Transport legal base is the correct one (this proposed amending Directive deals only with user

charges and does not amend the vehicle tax provisions which were the main reason for a dual legal base for the 1999 Directive). Although a small number of other Member States share our concerns on this issue we do not believe there is sufficient consensus behind our view for it to prevail. As with the 2006 Amendments, we believe it would be appropriate to record our position in a Minutes statement.

Conclusions
On the whole, we believe that the package to be discussed at the Council is one which the UK can support. It removes the requirement for hypothecation and contains important provisions on vehicles below 12 tonnes and on delegated acts, which would allow greater flexibility to Member States who introduce goods vehicle charging as well as constraining the Commission's ability to make changes to the structure of rates without reference to the Council and Parliament.
Your Committee will, of course, want to know the outcome of discussions at the Council of Ministers, and we will write to you again to provide this information.
6 October 2010

Letter from the Chair to Norman Baker

I am writing to thank you for the report in your letter of 6 October 2010 about developments on this draft Directive, for which the Committee was grateful.
13 October 2010

11857/08 (29581) Proposal for a Directive of the European Parliament and of the Council amending Directive 1992/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures

Letter from Mike Penning to the Chair

Norman Baker wrote to you on 6th October to update your Committee on developments on the proposal to amend Directive 1999/62 (The Eurovignette Directive). That letter contained an undertaking that we would update you further after the Council.

Philip Hammond's written statement to the House on 22nd October described the outcome of the Council, including the fact that political agreement was reached on a compromise Presidency text. The basis of that agreement was as set out in Norman's letter, namely:
• The removal of mandatory references to earmarking of revenues from charges for externalities;
• The right for Member States to vary charges in sensitive areas, in order to reflect congestion and other externalities;
• The right for Member States to exempt vehicles below 12 tonnes from the provisions of the Directive
• The rolling back of the Commission's powers to use Comitology to make changes to aspects of the Directive, including the methodology for calculating charges and the minimum tax rates set out in the Annexes

Although we pressed the case for increasing the maximum daily rate to €15 we remained isolated on this point and had to concede it.

However, we believe that the agreed text represents a significant policy gain that helps shift the balance back from Brussels to Member States on charging.

Our concerns that the amendments should have been considered on a tax rather than a transport base - and hence requiring unanimity rather than a qualified majority - were set out in a minutes statement. However the large majority of Member States accepted the view that a transport base was appropriate.
6 October 2010

Letter from the Chair to Mike Penning

The Committee has asked me to thank you for your letter of 23 November 2010 about the Council outcome on this draft Directive.
8 December 2010

11857/08 (29581) Proposal for a Directive of the European Parliament and of the Council amending Directive 1992/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures

Letter from Mike Penning to the Chair

I wrote to you on 23rd November 2010 to inform your Committee that the Transport Council had reached political agreement on plans to amend Directive 1999/62/EC (The 'Eurovignette' Directive). I am writing now to inform you that the European Parliament has completed its second reading of the amended directive. The EP's second reading position on the proposal is essentially the same as the position agreed at the Council of Ministers in October, and it is therefore expected that the Directive will be quickly adopted following a further vote of the Council.

The main relevant amendments are below. I listed many of them in my letter of 23 November. Below I also set out where negotiation with the European Parliament has resulted in some minor changes:

The removal of mandatory references to earmarking of revenues from charges for externalities. The EP argued strongly for mandatory earmarking, but we have secured a statement from the Commission saying that the text does not create any legal obligations on Member States;

The right for Member States to vary charges in sensitive areas, in order to reflect congestion, noise, air quality and other externalities;

The right for Member States to exempt vehicles below 12 tonnes from the provisions of the Directive. The EP argued to restrict this right. Instead, the text now requires Member States to provide reasons for exempting such vehicles;

The protection of the right of Member States to run flat rate time-based schemes of the sort being considered by the UK in the long-term as opposed to as a transitional arrangement towards (more expensive, less viable) distance-based schemes, as favoured by the EU Parliament and Commission;

The text does not give the Commission new delegated powers to change the ceilings on distance-based user charges as originally envisaged;

The rolling back of the Commission's powers to use the Comitology process to make changes to aspects of the Directive, including the methodology for calculating charges and, importantly, the minimum rates for Vehicle Excise Duty.

The European Parliament's amendments do not pose any difficulties for the UK and we remain of the view that the amended directive represents a significant policy gain that helps shift the balance back from Brussels to Member States on charging.
13 September 2011

Letter from the Chair to Mike Penning

The Committee has asked me to thank you for the information in your letter of 13 September 2011 about the latest developments on this draft Directive.
12 October 2011

CARBON DIOXIDE EMISSIONS FROM LIGHT COMMERCIAL VEHICLES

Letter from Norman Baker to the Chair

I will be attending the European Defence Agency (EDA) Steering Board on 9 December 2010. I enclose the EDA documentation for the Steering Board, setting out the position I intend to take on each of the agenda items. In addition, I will write to you again after the meeting to inform you of the outcomes.

Appointment of a new Chief Executive
Ministers will be invited to endorse the appointment of Claude-France Arnould as the Agency's next Chief Executive. I will support this appointment.

Extension of Contract of Deputy Chief Executive for Operations
Longer term, I believe that debate is required between EDA participating Member States on whether the Agency requires two Deputy Chief Executive positions or only one; views are mixed among nations. Until this debate is held, however, I am content to support the proposed extension of Adam Sowa as the Agency's Deputy Chief Executive (Operations).

EDA Work Programme 2011
Ministers will be invited to approve the EDA Work Programme for 2011. We believe that the budget and work programme are linked. I am not prepared to accept the 4% increase in the budget currently proposed when we are reducing our national defence spending by around 7.5%. As the work programme is based on the assumed budget increase I therefore assess that it is unaffordable. I will, however, support the work programme proposed by the Agency on the basis that it will be revised once the Agency's budget allocation is agreed for 2011.

Defence Data and Benchmarks
The Agency compiles and publishes data on an annual basis covering basic statistics for the Agency and its Member States. The main findings from the 2009 data results are that the total aggregate defence expenditure has fallen for a second consecutive year, a 3.7% decrease since 2008, which also includes a fall in personnel numbers. Although there has been positive development in collective benchmarks for equipment procurement, spending relating to research and technology continue to fall. I am content with the Defence Data work and will agree that it should continue in the future.

European Framework Co-operation (EFC) – Joint Investment Programme Chemical Biological Radioactive Nuclear (JIP CBRN) Protection
The EFC is aimed at maximising coherence of civilian security, space and defence related research. Ministers will be invited to note the progress made on the EFC initiative and the work on CBRN Protection in particular, and to task the Agency to initiate the process for requesting financial commitments from Member States. Whilst the JIP CBRN project is currently not a priority for UK Defence and we are not active participants in the
programme, we support its potential to assist other Member States to address this capability. I will therefore be agreeing to the recommendations made without financial commitment.

Level Playing Field (LPF)

A level playing field for industry remains a long-term aspiration of the EDA‟s work on the European Defence Equipment Market (EDEM). Ministers will be asked to note the Level Playing Field Progress report, affirm that the LPF initiative is a strategic and long-term exercise which will be aimed at aligning national approaches through intergovernmental cooperation and to task the Agency to continue working on LPF based on the findings of the report. The UK supports the work to date, recognising the need to protect national flexibility and sovereignty, and agrees with the need to concentrate on areas where there is a common agreement among participating Member States focussing on Harmonisation/Co-ordination of Regulations/Practices, Security of Suppy, Offsets, Small to Medium Enterprises and Market Awareness. I am content to agree to the recommendations in the paper.

EU Radio Spectrum Policy Programme
On 20 September, the European Commission transferred to the European Parliament and Council its proposal for the first Radio Spectrum Policy Programme (RSPP), which will outline how the use of radio spectrum can contribute to the single market and other European Union policies, including in Defence. Ministers will be invited to adopt the recommendations made for the EU Radio Spectrum Policy Programme and, in doing so, note that the policy will have medium to long term implications on the use of spectrum by military systems. I intend to agree to the recommendations proposed by the EDA. It is possible that participating Member States will debate whether or not the EDA should present the collegiate views of its participating Member States in European meetings on this subject. I do not not agree that the EDA should take on this role; it is a matter of national sovereignty for UK views to be represented by the UK.

Pooling and Sharing
Following the EU Defence Ministers Informal meeting in Ghent on 23/24 September, 2010, which I attended, Ministers recognised that greater co-operation for participating Member States and the pooling and sharing of capabilities offered a means of mitigating the effects of national reductions in defence budgets. The EDA is examining opportunities for pooling and sharing. The Ministerial Steering Board will be invited to note the work to date, task the EDA to make proposals on how participating Member States can build on this work and encourage Member States to raise future proposals. Our position is that work needs to focus on high ―value added‖ activity, acknowledging the work currently ongoing, but that the EDA must focus on where gaps currently exist in defence for pooling and sharing opportunities. Although the UK is currently not involved in any EDA pooling and sharing initiatives, we support the work in principle on the basis it has the potential to enhance capability, and I intend to support the recommendations made. I will, however, seek further clarification on when the details of the Agency‘s gap analysis work will be reported to Member States and what informal consultations have been conducted with NATO to date. Co-ordination and co-operation between the EU and NATO is critical to minimise duplication of effort.

Single European Sky (SES) / SES Air Traffic Management Reform (SESAR)
The SES programme relates to the legal and technical approaches to Air Traffic Management Reform. Although the SES programme has its origins in the civil sector, led by work in the Commission, there is correlation to the defence sector. Ministers will be invited to task the Agency further to investigate Airworthiness, Unmanned Aircraft System operations, Security of Airspaces and establish a common approach to safeguard the European Defence Technological Industrial Base (EDTIB). In addition, it is recommended that Ministers task the EDA to engage with Air Traffic Management experts within various international organisations and report back their findings. While I welcome the EDA‟s position and intent, and consider that the Agency may have a role to play, I would prefer to see it more clearly defined. Therefore, I will request that the EDA conduct further analysis to explain, in detail, the precise role it will take in establishing the defence requirements from the SES programme.

Defence Research at Union Level
The Steering Board will be asked to note the report on the Defence Research at Union level and in preparation for Framework Programme 8 (which relates to the Commission's research activities for the period 2014-2020), encourage constructive dialogue between the Agency, the Commission and European Parliament. While I will support the principle that there should be greater co-ordination between the EDA and the Commission, I am clear that this must not cut across sovereign state responsibilities.
9 December 2010

Letter from the Chair to Norman Baker

Thank you for your letter of 9 December, giving us an indication of the latest state of play on this proposal.

As you point out, the document has already been cleared, and, although it was helpful to have had this update, we do not think it calls into account that clearance, or that there is any need for us to make a further Report to the House.
15 December 2010

15317/09 COM (09) 593 (31093): Proposal for a Regulation of the European Parliament and of the Council: Setting emissions performance standards for new light commercial vehicles as part of the Community's integrated approach to reduce CO2 emissions from light-duty vehicles

Letter from Norman Baker to the Chair

Your Committee previously considered this proposal on 30th March 2010, at which time you cleared it from scrutiny. I wrote to you on 7th December to update you on the progress of the dossier, as it entered the trialogue process to reach a mutually satisfactory resolution between the Council, European Parliament and European Commission. This was in fact achieved on 15th December (as envisaged in my letter), and the Regulation adopted at a plenary vote of the European Parliament on 15th February. The Regulation is currently expected to be adopted at a meeting of the Transport, Telecommunications and Energy Council on 31st March, and to come into force shortly after.

I am writing to update you on the final shape of the Regulation, and attach a copy of the regulatory text as adopted by the European Parliament. Following my previous letter's outlining of the UK's priority issues and how each was progressing in the trialogue process, below is the outcome for these:

Long-term target. Our preference had been for a target of 135g/km in 2022. However, the preference among other Member States and EU institutions was for a 2020 date, and the agreed target for 2020 is 147g/km. This is acceptable to us as the emissions reduction trajectory is sufficiently close to our preferred option.

Small-volume derogation. This was a priority topic for the UK, and the agreed derogation delivers our aims. The main features (as per the draft regulation) are an eligibility threshold of 22,000 EU registrations and each manufacturer's target to be set based on the reduction potential of that individual manufacturer.

Multi-stage vehicles. The European Parliament-proposed provisions for this sub-sector were adopted in the final Regulation. As noted in my previous letter, this commits the Commission to putting forward a final solution by December 2011. I should add that multi-stage vehicles will not be left outside regulation while this issue is being resolved: the Regulation contains a specific provision that "*Where the specific emissions of the completed vehicle are not available, the manufacturer of the base vehicle shall use the specific emissions of the base vehicle for determining its average specific emissions of CO2*". While we have been keen for the treatment of this sub-sector to be addressed substantively, we are happy that this inclusion provides adequate *interim* treatment; although we will need to ensure that the Commission puts in train the necessary work to meet the December 2011 deadline.

Penalties. The headline penalty has been agreed at €95 (reduced from the proposal's €120), with modulation retained to 3g/km. As you may recall, we had reservations on going below €120 (and/or retaining modulation for more than the first g/km) as our analysis strongly suggested that a strong penalty regime would be necessary to ensure compliance by securing it as the more cost-effective option. However, we acknowledge that reputational factors—the damage to a company's public image from being seen to 'break the rules', especially given that money paid in penalties means a shortfall in investment that could have reduced running costs for future vehicle purchasers—could help encourage compliance even where strict least-cost analysis tends to negate it.

Super-credits. The agreed provision for this element is that super-credits will run until 2017 (compared with 2015 in the draft regulation), with an initial multiple of 3.5 (compared with 2.5). We are happy with this, as a degree of generosity in both duration and multiple will be important in encouraging the innovative technologies that are the purpose of the super-credits provision.

Near-term target phase-in. As per my previous letter, the final Regulation has confirmed a phase-in starting at 70% in 2014 and full compliance from 2017. Our preference had been for an unphased target starting in 2016; but this was always a minority view, and was not a 'red line' topic in the context of the range of important issues in this Regulation.

Overall we are satisfied that this Regulation represents a good balance between the important considerations that come into play in tackling light commercial vehicle CO2 emissions.
5 April 2011

Letter from the Chair to Norman Baker

Thank you for your letter of 5 April, enclosing a copy of the text finally agreed by the Council, European Parliament and Commission, and highlighting the outcome on the main outstanding points.

We were grateful for this further update, but we do not think this calls into account the clearance given by our predecessors in March 2010, or that there is any need for us to make a further Report to the House.
27 April 2011

EM 15935/10 Proposal for a DIRECTIVE OF THE EP AND OF THE COUNCIL amending Directive 2000/25/EC as regards the provisions for tractors placed on the market under the flexibility scheme

Letter from Norman Baker the Chair

I enclose with this letter an Explanatory Memorandum on the subject of a recent proposal by the European Commission to extend the "flexibility scheme" that eases the transition from one exhaust emissions stage to the next for agricultural and forestry tractors. I apologise for the late delivery of this Explanatory Memorandum. Our internal processes are being tightened up in order to prevent the recurrence of such delays.

The Committee considered at its meeting today your Explanatory Memorandum of 10 December on this proposal to relax somewhat the application of Stage IIIB emission limits for tractors.
17 December 2010

Letter from the Chair to Norman Baker

As with an earlier such proposal relating to non-road mobile machinery, we noted that, whilst the Government believes that the gains to engine manufacturers and operators would on balance outweigh the adverse environmental implications and the impact on manufacturers of exhaust after-treatment facilities, it intends to consult further and to provide an Impact Assessment. In view of this, we again felt that it would sensible for us to await such an Assessment before seeking to take a definitive view.
12 January 2011

Report on Strengthening Air Cargo Security - the High Level Working

Group 9864/09 COM (2009)217 (30645) Proposal for a Directive of the European Parliament and of the European Council on Aviation Security Charges 10865/10 COM (2010)311 (31729) Update on the use of Security Scanners

Letter from Theresa Villiers to the Chair

I am writing further to Philip Hammond's letter of 29 July 2010 in which he promised to inform you of the progress of the proposed Aviation Security Charges Directive. I would also like to take this opportunity to update you on work being taken forward in the aviation field, around cargo security and security scanners.

Strengthening Air Cargo Security

Following the discovery of two improvised explosive devices concealed within cargo on two aircraft on 29 October, the Presidency and the Commission decided on 8 November 2010 to set up an ad hoc High Level Working Group to look at ways to strengthen air cargo security. The Group prepared a report on strengthening air cargo security, including the EU Action Plan on Air Cargo Security, which was presented to the Council on 2 December 2010. This carries a limited marking. Unfortunately, the late addition of this item to the agenda meant it was not possible to write to your Committee ahead of the Council. However, you may find it useful to have an account of the Report and the Council discussion to assist with your general scrutiny of aviation security matters.

The aim of the High Level Report and its action plan is to address the threat of this type of attack to civil aviation. The report's recommendations seek to strengthen cargo security controls, ensure better coordination of action and information within the EU and to further develop action at the international level; in particular with the International Civil Aviation Organisation.

The recommendations include:
• Accelerating the adoption of measures enhancing aviation security in relation to cargo originating from outside the EU;
• reviewing procedures for the designation of "trusted" consignors and carriers;
• strengthening the compliance monitoring of the cargo and mail rules;
• further investment in research to improve the performance of current detection technologies and to come up with new possibilities;
• better sharing of intelligence and threat information to ensure a prompt, effective and harmonised response to arising threats;
• promotion of global regulatory standards, especially through the International Civil Aviation Organisation (ICAO); and
• further initiatives to help certain countries outside the EU to enhance their security capacities.

The information in this letter which summarises the contents of the High Level Report, and the full document, 'Report on strengthening air cargo security 16271/10' (enclosed) is being provided to the Committee under the Government's authority and arrangements agreed between the Government and the Committee for the sharing of EU documents carrying a limited marking. It cannot be published, nor can it be reported on in any way which would bring detail contained in the document into the public domain.

At the Transport Council on 2 December I broadly welcomed the report and associated Action Plan. I provided the Council with some details of the specific nature of the terrorist plot and viability of the package intercepted in the UK. The Council welcomed this report and the Presidency concluded orally that the Council had a "positive appreciation" of it. The Presidency asked the Commission and Member States to speedily implement the measures in the Action Plan. It invited the Commission to report back to the Council on progress made within the next 6 months. A parallel discussion took place in the JHA Council on the same day.

Following the discussions at the Transport and JHA Councils, conclusions were adopted at the Environment Council on 20 December 2010. The conclusions said that: *"The Council welcomes and agrees on the Report on Strengthening Air Cargo Security and requests that the Commission and the Member States speedily implement the actions listed in the EU Action Plan on Strengthening Air Cargo Security. The Commission is*

invited to report on progress within the next 6 *months."*

Aviation Security Charges Directive
As you may recall, no first-reading agreement was reached between the European Parliament and the Council in May 2010 on the proposed Aviation Security Charges Directive (EM *9864/09).* The Belgian Presidency did not convene any meetings to discuss the proposal and early indications suggest that the Hungarian Presidency does not view this dossier as a priority. We shall of course continue to provide your Committee with updates on any developments on this proposed Directive.

Security Scanners
Your Committee cleared EM *10865/10* on the Commission's communication on the use of security scanners in September. The Commission is currently finalising its Impact Assessment which should address concerns about the balance between security needs and fundamental rights. The Commission expects to bring forward a legislative proposal in the coming months to allow scanners to be used as a primary security measure.

In the UK, we have been carrying out an EU-approved security scanner trial at Manchester airport as part of an alarm resolution process. In an interim report submitted to the Commission the airport have highlighted the operational and security benefits achieved by the use of this system and the high level of public satisfaction with this method of screening. I hope that this update is useful. I will continue to keep your Committee informed of the progress of all these issues. Any new legislative proposals will of course be subject to Parliamentary Scrutiny.
24 January 2011

Letter from Theresa Villiers to the Chair

The Committee has asked me to thank you for the account you gave it of developments in relation to aviation security in your letter of 24 January 2011.
2 February 2011

Unnumbered document (31918): Proposal for a Directive of the European Parliament and of the Council facilitating cross-border enforcement in the field of road safety 7984/08 (29587) Proposal for a Directive of the European Parliament and of the Council facilitating cross-border enforcement in the field of road safety

Letter from Mike Penning to the Chair

I am writing to update your Committee with the position regarding the opt-in decision on this proposal.

My supplementary EM of 21 December 2010 explained that we were in the process of formalising the UK Government position on this Directive, which was established as part of our three-month opt-in process. The proposal was subsequently debated in European Committee A on 26 January, the motion noting that the Government was deciding whether or not to opt in to the Directive.

The 3 month Governmental opining period has now expired and following consultation across departments the decision was made that, on balance, it would not be in the United Kingdom's best interests to opt in to this proposed Directive at this point.

The key factors in support of not opting in were:
• risks around affordability - the significant start-up and running costs were our police to use keeper information obtained under the proposed Directive for enforcement purposes;
• issues around our ability to pursue fines against registered keepers as opposed to drivers;
• the lack of added value of the Directive, given that most of the information will be available through

implementation of the Prom Council Decisions, which the UK has signed up to, but not yet implemented. ("Prum" provides for the exchange of keeper data between Member States in relation to criminal offences);
• Not opting in at this stage will give us the opportunity to carefully scrutinise the actual costs for setup and implementation of this Directive across Member States, informing any future decision on a possible post-adoption opt-in; and
• We do not consider that a fine would have enough of a deterrent effect to bring about increased behavioural change, since research shows that it is the fear of points on a licence, or losing the licence altogether which have the main effect on increasing compliance.

We noted that whilst there are important differences between the scope of the proposed Directive and the Prum Council Decisions, there would be a significant overlap between the two regimes.

Additionally, although the Directive itself does not require the UK to take any enforcement action, the greater flow of data would dramatically increase enforcement activity in Her Majesty's Courts Service as an agency of the Ministry of Justice (MoJ) in relation to the Council Framework Decision on the Mutual Recognition of Financial Penalties 2005/214/JHA (FD 2005/214), which requires the UK to enforce non-payment of fines against UK citizens for offences committed by them when abroad.

There could be as many as 500,000 penalties per annum for UK registered drivers arising from offences committed in France alone. (MoJ estimate that only 7% of these UK drivers would pay the fines directly to the French Authorities). Thus, the costs of administering an increased volume of cases arriving through the EU are a considerable concern for MoJ. In view of the current manual methods of registering these fines, the MoJ estimate that it might cost the UK in the region of £33 million per annum to enforce these financial penalties against British drivers through transferred enforcement under the FD 2005/214.

Any fines the UK enforced against UK citizens for offences committed in other Member States may be retained by the UK, which may create a significant revenue stream. However, whilst the uptake of cases under the existing FD 2005/214 may theoretically be high, in practice, it has been initially very low. To date, 30 cases have been received, 25 of which related to road traffic offences. This low number is however partly due to the lack of data exchange, which the proposed Directive and Prum seek to rectify.

There would also be substantial running costs for the UK under this Directive. If the UK were to prosecute offending foreign motorists, the enforcement costs for the police (for example, translation and sending of letters to foreign registered keepers including bespoke information that would need to be translated into their home languages) would often be higher than the level of the fines. The high running costs are liable to limit the use of the proposed Directive by the UK police, who have indicated that given the UK cannot compel foreign registered keepers resident abroad to disclose who was driving the vehicle at the time the offence was committed in the UK, it would not be financially viable to enforce against these foreign drivers.

As the proposed Directive would not offer data exchange which could serve effective enforcement in the UK, it is likely that the road casualty reduction effects in the UK would be very limited, as indicated in the Impact Assessment. However it may have significant safety benefits elsewhere in the EU, where it is the registered keeper who is liable for the road traffic offences, including for vehicles from the UK.

A risk of not opting in could be that there is a reduction in strength of our negotiating position as the detail of the proposed Directive continues to be developed.

However, we feel that any risks are outweighed by the risks that we would have faced had we decided to opt in at this stage, particularly as once an opting decision has been made, it cannot be reversed.

To mitigate against any risks of not opting in at this stage, we are keen to state that we will look longer term at the possibility of a post adoption opt-in; this can be done by applying to the Commission and Council in writing. The Council are able to impose "reasonable" conditions on post adoption opt-in.

We expect that this would allow us to continue to play a part in negotiating the final text of the Directive, a key factor of which would be how to reconcile the driver/keeper issue.
10 March 2011

Letter from the Chair to Mike Penning

The Committee has asked me to thank you for your letter of 10 March 2011 about the Government's decision not to opt in to this draft Directive at this time, a decision which it welcomes.
16 March 2011

Unnumbered document (31918): Proposal for a Directive of the European Parliament and of the Council facilitating cross-border enforcement in the field of road safety

7984/08 (29587) Proposal for a Directive of the European Parliament and of the Council facilitating cross-border enforcement in the field of road safety

Letter from Mike Penning to the Chair

I am writing to update your Committee with the position regarding the state of play of this proposal.

When I last wrote to your Committee on 10 March, I said that we expected to be able to continue to play a strong part in negotiating the final text of the Directive, despite not opting in to it at that point. I am pleased to say that we have been able to do this, for example, by resisting attempts by the European Parliament to include widespread references to harmonisation of road traffic rules, by including technical changes to the data protection provisions, and by defending the standard wording relating to the UK and Ireland's opt-in.

The final text that is expected to be adopted has retained the police cooperation legal base, as well as the overall structure accepted by the Council. Changes made to the text include stronger references to data protection, the provision for a detailed report by the Commission into the effectiveness of the Directive, and wider application of delegated acts. The 'driver/keeper issue', which could prevent the UK from pursuing non-resident drivers committing offences on UK soil, was not able to be addressed in the proposed final agreement.

The text will come back to COREPER and Council for a final vote once the lawyer-linguists have made any necessary corrections and amendments, which should be in the next few weeks.

We will continue to monitor the implementation of the Directive in the different Member States paying particular attention to the setup and implementation costs.
9 August 2011

Letter from the Chair to Mike Penning

The Committee has asked me to thank you for your letter of 9 August 2011 about the latest developments on this draft Directive. It was grateful for this information, but should be grateful to know whether the Government is now considering opting in to the Directive.
14 September 2011

Unnumbered document (31918): Proposal for a Directive of the European Parliament and of the Council facilitating cross-border enforcement in the field of road safety

7984/08 (29587) Proposal for a Directive of the European Parliament and of the Council facilitating cross-border enforcement in the field of road safety

Letter from Mike Penning to the Chair

Thank you for your letter of 14th September.

The Directive was published in the Official Journal of the European Union on 5th November 2011 and all member states excluding the UK, Ireland and Denmark now have 24 months in which to transpose it into national law.

I would like to confirm that the Government is currently not intending to opt in to the Directive in the short or medium term.

Should we decide to opt in post adoption, we will of course go through the usual protocols of notifying Parliament and your committee.

In the meanwhile, we will scrutinise the actual set up and implementation costs of the Directive in other member states and look at how it works in practice before further consideration as to whether it would be beneficial for the UK to look at post-adoption opt-in in the longer term.
21 Dec 2011

Letter from the Chair to Mike Penning

The Committee has asked me to thank you for your letter of 21 December 2011 about the Government's intentions in relation to an opt-in to this Directive. It was grateful for this information.
11 January 2012

Draft Commission Directive ../.. .IEU of [...] laying down calculation methods and reporting requirements pursuant to Directive 98/70/EC of the European Parliament and of the Council relating to the quality of petrol and diesel fuels (33215)

Letter from Norman Baker to the Chair

On 18 October I submitted to your Committee an unnumbered Explanatory Memorandum (EM) on the proposed implementing measures for Article 7a of the Fuel Quality Directive *(98/70/EC,* as amended by Directive *2009/30/EC),* referred to below as the "FQD".

I would like to provide an update on the progress of these proposals. At the Fuel Quality Committee meeting of 25 October a number of Member States, including the UK, sought clarification on the proposals from the European Commission. Though the agenda had suggested a possible, vote, I am pleased to say that no vote was called.

The next meeting of the Fuel Quality Committee is 2 December. No agenda or papers have been sent for this meeting yet. It is possible that a vote on the proposals could take place at this meeting. However, another meeting of the Fuel Quality Committee has been scheduled for 19 January 2012 which suggests that the vote will be postponed until then.

Many questions and queries about the proposals were raised by Member States at the 25 October meeting and more information and material will be provided at the December meeting in response to these. Therefore I believe it would be preferable for the vote to take place in January.
I will write to your Committee with a more detailed update before the Fuel Quality Committee meeting of 19 January when more information is available.

15 November 2011

Letter from the Chair to Norman Baker

Thank you for your letter of 15 November, letting us know that no vote was taken on this proposal on 25 October, and that, although a further meeting had been scheduled for 2 December, it seemed likely that any vote will be postponed until 19 January, by which time it is hoped that information in response to the points raised by Member States will be available.

We were grateful for this update, and for your undertaking to keep us informed.
7 December 2011

EM *13789/10* (32037) proposed recast of the Directive establishing a single European railway area

Letter from Theresa Villiers to the Chair

In my letter of 11 July I reported the outcome of the 16 June Transport Council, and the general approach reached on this proposal. I am now writing to update you on developments ahead of the 12 December Transport Council, including the outcome of the European Parliament's consideration of this proposal and a further working group discussion.

The European Parliament had its first reading of this proposal on 16 November. Many of the Parliament's amendments differed significantly from the Council's general approach on such key issues as:

ARTICLE 6 - SEPARATION OF ACCOUNTS (also amendments to linked recitals 6 and 6a)

The original proposal, and the general approach, sets out requirements for the separation of accounts between businesses relating to the provision of transport services and those managing railway infrastructure whereby public funds paid in relation to public service remits must be shown separately and not transferred to other activities. We support the principles of transparency outlined in both the original proposal and the General Approach text.

EP amendments to Article 6

We support the principles of transparency outlined in both the original Council text and the General Approach text. We have concerns about EP amendments prohibiting:

The EP amendments would prohibit the revenues of an infrastructure manager in any way being used by a railway undertaking or body controlling a railway undertaking.

We are concerned that these restrictions would appear to apply to all infrastructure managers and all sources of income - public or otherwise. In doing so they would appear to prevent a number of valid and necessary transfers of funds from infrastructure managers to other entities including those to railway undertakings which cover performance (as Annex VIII), incentive and efficiency regimes, contractual compensation and the purchase of services at market conditions.

ARTICLE 7 - INDEPENDENCE OF ESSENTIAL FUNCTIONS OF THE INFRASTRUCTURE MANAGER

The original text adds determination and collection of charges to the list of essential functions of an infrastructure manager which must be entrusted to bodies or firms that do not provide any rail transport services. It requires essential functions other than charge collection to be performed respectively by a charging body and by an allocation body that are independent from any railway undertaking.

EP Amendments to Article 7

Various EP amendments suggest additional independence requirements in respect of all the functions of infrastructure managers. We consider that this would restrict organisational flexibility. This would reduce Member States' freedom to improve structures in the rail industry to tackle the rail industry's cost base, to deliver the required outputs at a lower cost through the better alignment of incentives and more integrated working practices.

The EP have proposed additional text under this Article which would oblige the Commission to publish proposals for mandatory separation of infrastructure management from transport operations as well as proposals for domestic rail passenger market opening by 31 December 2012.

This amendment pre-judges the case for unbundling which has not yet been made in the EU's own studies. UK experience suggests that the complex contractual framework that is required to implement it incurs costs; although the EU study suggests that observed trends in costs, fares and service quality can be explained by a wide range of factors and in most cases cannot be attributed to vertical separation itself.

There has been only one Council working group meeting since the general approach and the first reading by the EP. That meeting took place on 25 November and discussed a small list of EP amendments which could be accepted by the Council on the basis that these were essentially the same as the general approach. The meeting did not consider the other EP amendments, some of which are at considerable variance from the general approach.

As a result it is expected that the Presidency will seek a political agreement on 12 December, which is expected to incorporate only those EP amendments that do not alter the general approach. This will not, of course, include the amendments that I have described to Articles 6 and 7. Any political agreement therefore will not differ from the general approach and will be acceptable to the UK.

If a political agreement is reached at the Transport Council, discussions with the EP will be taken forward under the Danish Presidency with a view to trying to reach a second reading deal. We understand that the recast will be a priority for the Danes during their Presidency, and we
therefore expect that they will try to make enough progress to reach agreement at the March 2012 Transport Council.

I attach for information the text of the EP's first reading of this proposal.

The Department is still in the process of preparing an impact assessment, which I will send to your Committee as soon as it is finalised. I will also, of course, keep your Committee informed about any
further developments.
30 NOV 2011

Letter from the Chair to Theresa Villiers

The Committee has asked me to thank you for your letter of 30 November 2011 about developments on this draft Directive. It was grateful for the information about the European Parliament’s amendments and the Council’s likely response.
14 December 2011

MANDATE TO NEGOTIATE A HIGH-LEVEL AGREEMENT WITH THE EUROPEAN ORGANISATION FOR THE SAFETY OF AIR NAVIGATION (EUROCONTROL)

Letter from Theresa Villiers to the Chair

I am writing to inform the Committee that the Transport Council on 6 October 2011 agreed to grant a mandate to the European Commission to conduct negotiations with the European Organisation for the Safety of Air Navigation (Eurocontrol) on a high-level agreement ("the Agreement") aimed at establishing a new and stable framework for enhanced cooperation.

Since the advent of Single European Sky in 2004, the EU has considerably extended its regulatory experience in the field of air traffic management (ATM) but lacked the technical expertise in this area. Eurocontrol has been the source of this expertise and in 2003 the two organisations concluded a Memorandum of Cooperation in recognition of the support each gave to the other's activities.

The launch of the SES II package in 2008, which included the introduction of a Performance Scheme for Air Navigation Services and a centralised Network Management Function, has led to Eurocontrol becoming increasingly viewed by the Commission as the technical and operational arm for the delivery of the SES. It is also actively involved in the SES ATM Research (SESAR) Programme to modernise the European ATM system. Eurocontrol has recently been designated as the Network Manager for the SES. The two organisations have also developed partnerships in other areas, such as the formation of the European Aviation Crisis Coordination Cell established in the aftermath of the 2010 volcanic ash crisis.

It is appropriate, therefore, for the cooperation to be strengthened and consolidated through the proposed Agreement. Eurocontrol has realigned its internal structures to accord with the multiple roles it has in SES/SESAR. Three "pillars" have been created: SES (for the work it is mandated to carry out by the Commission), Network Management and SESAR.

Eurocontrol with its 39 Member States also provides a conduit for extending the SES initiative beyond the EU. The cooperation of Eurocontrol's non-EU Member States is crucial to the delivery of a truly pan-European SES. Eurocontrol also actively cooperates with neighbouring North African and Eastern Mediterranean States several of whom are participating in functional airspace block initiatives in the area. This pan-European dimension will be reflected in the Agreement.

The Commission will be assisted in the negotiations by a Special Committee comprised of Member States.

The Eurocontrol Agency also had to seek delegated authority from its Member States, including the UK, to conduct these negotiations with the Commission which they granted in May 2011. The Agency has set up a "Negotiation Support Group" of a core of members of the Provisional Council's Co-ordinating Committee (PCC) to assist its negotiation team.

Negotiations have already commenced and are scheduled to finish before the year end. During the spring of next year the draft Agreement will go on to be agreed in parallel via each organisation's internal approval procedures. As a member of both organisations, the UK will, from its differing vantage points, seek to ensure that the interests of members of each organisation are preserved in the final text. The Agreement is likely to enter into force in the summer of 2012.
29 Nov 2011

Letter from the Chair to Theresa Villiers

The Committee has asked me to thank you for your letter of 29 November 2011 about the Commission's mandate for negotiations with Eurocontrol. It was grateful for this information and looks forward to scrutinising the agreement in due course.
14 December 2011

EM 17511/10 (32332) – Carriage of passengers and their luggage by sea

Letter from Mike Penning to the Chair

Thank you for the confirmation that your Committee cleared the Council Decisions concerning the accession of the European Union to the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 from scrutiny. The Committee noted the Government's case for opting-in to the Article 81 based Council Decision and accepted that this is the right course for the UK.

I want to inform the Committee that the Government has now notified the Council and the Commission of its wish to opt in to the Council Decision that is founded on an Article 81 legal base. The UK notified its intention to accept the measure soon after the Council Decision was adopted at Transport Council on 12 December 2011.

Letter from the Chair to Mike Penning

The Committee has asked me to thank you for your letter of 20 December 2011 about the Government's opt-in to the Article 81 TFEU based Decision. It was grateful for this information.
11 January 2012

Letter from Justine Greening to the Chair

I am writing to advise your Committee of the transport issues that are likely to be taken forward under the Danish Presidency.

Transport Council Business

Two Transport Councils are planned, the first in Brussels on 22 March and the second in Luxembourg on 7 June. There are no plans for an informal Council. The headline objectives for the Danish Presidency are to reach agreement in Council on:

- Tachographs and the associated amendment to the driving licence Directive (March)
- Trans-European Networks (March)
- Airport ground handling (March)
- Aviation Noise ("balanced approach") (June)
- Enforcement of Maritime Labour Convention (June)
- New Galileo governance Regulation (partial agreement) (June)

They will also pursue negotiations with the European Parliament towards agreements on:

- The recast of the first rail package (second reading)
- The EMSA regulation (second reading)
- Seafarer training (STCW) (first reading).

In more detail:

Land Transport

The Danes will seek to resolve the outstanding issues on the proposal to revise the technical specification for **tachographs** (EM 13195/11). The Council reached a general approach in December on all elements of this proposal except the merger of the driving licence and the driver card. The Commission subsequently published a proposal to **amend the driving licences Directive** (EM 16842/11) which is consequential to the main proposal. The working group has not yet really engaged with the issues so it is hard to say how the discussions will go.

The Danes will also open discussions with the European Parliament with a view to a second reading agreement on the **recast of the first rail package** (EM 13789/10).

Trans-European Networks

The proposed **TEN-T Regulation** (EM 15629/11) revises the criteria for projects to receive funding from the Connecting Europe Facility. But it would also require Member States to ensure that routes on the transport TENs network meet certain criteria. From discussions at the December Council it is clear that some Member States, like the UK, have significant concerns about this element of the proposal. The Danes confirmed they are seeking a General Approach at the March Council, but might move this to June if necessary.

Aviation

The focus of attention will be the **airports package** (EM 18007/11, 18008/11, 18009/11, 18010/11). The Danes will try to reach a general approach on two elements of the airports package, on **groundhandling** (in March) and **noise** (in June). They may also hold a couple of working group meetings on the revision to the **slot allocation** regulation, with a possible progress report at the June Transport Council. Following your Committee's recommendation, the airports package will be debated in Standing Committee on Monday 19 March.

In the light of international opposition in recent months to the inclusion of **aviation in the EU Emissions Trading System** (ETS) it is likely that the next six months will see significant engagement between the EU and third countries. There may also some discussion of the implementation of ETS for aviation, to share best practice and resolve any issues that have arisen since aviation's inclusion in the ETS on 1 January 2012.

The Council is expected to sign off the **air transport agreements** with Moldova (March) and Israel (June).

Maritime

The Danes will take shipping items at the June Council. They will seek an early second reading agreement with the European Parliament on the proposed amending regulation on the **European Maritime Safety Agency** (EM 15717/10), which renews and enlarges the mandate for the agency.

The Danes are optimistic that they can reach a first reading agreement with the European Parliament by June on the proposed Directive on **Minimum level of training of seafarers** (EM 14256/11). The Government will want to ensure our safeguards on costs and privacy are maintained throughout discussions.

Discussions on the forthcoming proposal on provisions of the **Maritime Labour Convention** will begin once the proposal has been published by the Commission. The proposal is expected to focus on issues under Title V of the International Convention (Compliance and Enforcement). The Danes are hoping for a General Approach in June.

Finally, an evaluation report on the **Blue Belt** project is expected to be released, although no specific timing has been given. The Danes are supportive of the project, and plan an orientation debate during the June Council.

Business in other Councils

Technical Harmonisation

There are currently three technical harmonisation legislative dossiers where DfT leads. These have single market legal bases and fall under the Competitiveness Council.

Type approval and market surveillance of **two and three wheel vehicles** (EM 14622/10) and **agricultural and forestry vehicles** (EM 12604/10) have been under negotiation for over a year partly due to their size and technical detail but both could still be the subject of a first reading deal with the European Parliament. While we broadly support the intention of both proposals, which is to simplify processes and reduce costs for both industry and government, we have some significant concerns that the proposals could create additional burdens for industry, and that these were either not quantified or not included at all in the Impact Assessment. However we have not as yet had significant support from other Member States.

The third dossier is a recent proposal to reduce **noise levels in motor vehicles** (EM 18633/11). This has not yet been discussed in the working group. Our own impact assessment is in hand, but burdens on small volume car manufacturers of high value cars, of which the UK has several, may be a concern.

At present there are no indications that the Danes intend to prioritise any of these dossiers.

Environment dossiers

In addition to discussion of Aviation Emissions Trading (see above) the Environment Council might return to the issue of **international maritime and aviation emissions** and potential uses of revenues. On **biofuels** we should expect a potentially controversial legislative proposal for tackling the indirect land use change impacts of biofuels, though timing and content are still very uncertain.

The Environment Council is also handling the Commission proposal on the **Sulphur Content of Marine Fuels** (EM 12806/11). This aims to turn a 2008 IMO agreement (the revision of MARPOL Annex VI) into EU legislation. Although the Danes hope to achieve a first reading agreement under their Presidency, this may prove harder than expected. The 2008 agreement introduced measures to reduce significantly sulphur dioxide emissions across European waters, in particular in designated Emission Control Areas, currently only in the North and Baltic Seas. However, some Member States bordering these seas are now voicing concern about the impact on their shipping industry.

The Commission are planning to amend the EU Waste Shipment Regulations, which include provisions for the control of the dismantling and recycling of ships. Currently, these regulations are based on the Basel Convention which controls the trans-boundary movements of hazardous waste and its disposal. The EU Regulation includes a prohibition on the export of waste (including ships) to non-OECD countries (the "Basel Ban"). The Commission's proposed amendment would see ship recycling being based on the new Hong Kong Convention 2009.

We expect the proposal to be published in March or April, so the Danes will not be able to finalise it during their Presidency. DEFRA is the policy lead for the Basel Convention, EU Waste Shipment Regulations and EU strategy for better ship dismantling. DfT are responsible for policy on the Hong Kong Convention and environmental policy in relation to shipping

Integrated Maritime Policy

The Commission will continue to take forward a number of work strands under the umbrella of an **Integrated Maritime Policy** (EM 14284/10). In particular, we expect an initiative on Maritime Spatial Planning in mid 2012, for which DEFRA will lead.

Commission Activity

There are a few additional forthcoming proposals worth noting.

Revision of existing legislation on Road Worthiness Testing – Originally intended to be released in 2011, this proposal is now expected to come out in the first three months of the Danish Presidency. So far we have had no indication from the Danes as to whether they will give the file much priority.

Clean Power for Transport – This is expected to consist of two parts. The first will be a communication on which alternative fuels are considered the most promising. The second will be a legislative proposal, which will focus on infrastructure to guarantee access to alternative fuels across the EU (with an aim of breaking fuel dependency). This proposal is not expected to be released until mid summer, between June and September. We favour a technology-neutral approach to the decarbonisation of road transport, and will resist any suggestions that affect the policies of Member States, including the UK, who have taken the initiative in the deployment of ultra low carbon vehicles.

The Commission-chaired committee on **fuel quality** will continue to discuss implementing measures under the Fuel Quality Directive, including a greenhouse gas accounting methodology for fossil fuels and treatment of oil sands/natural bitumen (unnumbered EM). The Committee may reach a conclusion over the first half of the year.

I hope that this general summary of our expectations is useful. Further information will, of course, be provided to you in the future on each of these dossiers, in line with the usual procedures for Parliamentary scrutiny.

February 2012

HM TREASURY

RE: EM 13645/09, 13648/09, 13652-4/09, 13656-8/09: EUROPEAN SUPERVISORY AUTHORITIES AND EUROPEAN SYSTEMIC RISK BOARD

Letter from Mark Hoban to the Chair

I am writing to provide an update to your Committee on the latest ECOFIN discussion of the European Commission's proposed legislation to establish new EU Supervisory Authorities and the European Systemic Risk Board. I have written separately to Lord Roper in reply to a letter from the Lords Committee.

Update on the July ECOFIN agreement on supervision
At the ECOFIN council on 13 July, EU finance ministers agreed a revised position on the Commission's proposals to establish a European Systemic Risk Board and three new European Supervisory Authorities. In this agreement, the Council:
• Reaffirmed· its December 2009 agreement that supervision should remain national, that the proposed EU roles in mediation and crisis should be subject to safeguards to protect member states fiscal responsibilities, and that EU direct powers over firms should not override national supervisors' discretionary decisions.
• Rejected demands by the European Parliament (EP) for an EU resolution fund and EU supervision of cross border firms.
• Reaffirmed that the European Banking Authority will be based in London.

• Sought to limit and tie down the role suggested by the EP for the European Supervisory Authorities in banning products. As a result, the Council agreed that such powers would:
• be specifically agreed by Council and EP in legislative proposals;
• be subject to a sunset to require the authority to regularly reaffirm its decision;
• include an appeal procedure requiring a qualified-majority vote to support a ban if a Member State requests it.

The Presidency will now take forward negotiations on the basis of the new mandate, and will seek to find agreement ahead of the September EP plenary vote. The Government supports this new ECOFIN consensus, and looks forward to a swift agreement with the EP and the establishment of the bodies by January 2011.
27 July 2010

EMS 13645/09, 13648/09, 13652/09, 13653/09, 13654/09, 13656/09, 13657/09 AND 13658/09: EUROPEAN SUPERVISORY AUTHORITIES ANDEUROPEAN SYSTEMIC RISK BOARD

Letter from Mark Hoban to the Chair

I am writing to provide an update to your Committee on the European Commission's proposed legislation to establish new EU Supervisory Authorities and a European Systemic Risk Board.

The Commission proposed this legislation in September 2009, and the ECOFIN Council agreed to a general approach in December 2009. The Government supports this agreement Since then, the European Parliament's ECON committee has also agreed a negotiating position, at its meeting on 10 May 2010.

The ECON reports propose a series of amendments to the Commission's proposals that are very different to the original proposals. In particular they propose EU level supervision of all significant cross-border financial institutions, the establishment of European Stability Funds, and European Guarantee Schemes to protect consumers.

The Government believes it is appropriate for day-to-day supervision of financial institutions to remain at the national level. Furthermore, it is key to ensure that no EU decisions over national supervisors can have an impact on Member States' fiscal responsibilities. Finally, the new Authorities must be established on a sound legal footing, and have high standards of governance, transparency and accountability.

In this context the Government does not support many of the amendments proposed by the European Parliament's ECON committee, and in particular those outlined above that would undermine national supervision.

The Council and European Parliament must now try to agree a joint text in the 'trilogue' process. This is currently underway. If a first reading deal can be agreed, representatives of the European Parliament and Council will agree a text that both can accept, and the European Parliament will adopt it at its plenary on 6 July 2010. The Council would then also adopt the same text shortly afterwards. Otherwise, the European Parliament could delay its vote until September (at the earliest). If the European Parliament and Council adopt different texts, the proposal will move to a second reading.

The Government supports the swift conclusion of a first reading deal, if possible, and is working closely with our European partners to find agreement.
28 June 2010

Letter from the Chair to Mark Hoban

The Committee has asked me to thank you for your letters of 28 June and 27 July 2010 about developments on this draft legislation. It was grateful for the information.
8 September 2010

EM 13688/09, PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING DIRECTIVES 2003/71/EC ON THE PROSPECTUS TO BE PUBLISHED WHEN SECURITIES ARE OFFERED TO THE PUBLIC OR ADMITTED TO TRADING AND 2004/109/EC ON THE HARMONISATION OF TRANSPARENCY REQUIREMENTS IN RELATION TO INFORMATION ABOUT ISSUERS WHOSE SECURITIES ARE ADMITTED TO TRADING ON A REGULATED MARKET

Letter from Mark Hoban to the Chair

The European Commission's proposal amending the Prospectus Directive was discussed in Council working groups and a general approach was agreed at the Committee of Permanent Representatives (COREPER) on 17 December 2009. Following the last Trilogue between the Presidency, European Commission and European Parliament a text was agreed at COREPER on 2 June.

The Government supports the process of review of the existing legislation and the resulting proposal for amendments to improve the balance
d) Ensure the prospectus is published in an electronic form to enable easy access to information.
e) Introduce changes to take into account the entry into force of the Lisbon Treaty.

I hope that this further information is helpful. The European Parliament is expected to vote on the text at Plenary on 17 June and the Presidency is likely to seek a general approach following this.
16 June 2010

Letter from the Chair to Mark Hoban

The Committee has asked me to thank you for your letter of 16 June 2010 about developments on this draft Directive. It was grateful for the information.
8 September 2010

2011 EU DRAFT BUDGET

Letter from Justine Greening to the Chair

I am writing to highlight my concern on a matter of Parliamentary scrutiny of a European Union dossier, specifically the EU's draft budget for 2011. The draft budget was published by the Commission in mid-May, and I submitted an Explanatory Memorandum on it on 17 June. I know that the European Scrutiny Committee usually recommends the EU draft budget for debate, in time for the Government to form its policy before the adoption of Council's first reading position on it. This adoption is due to take place around 15 July.

In view of the timing of the Committee's appointment, I am concerned that there will be insufficient time for the Committee to consider the issue, and - if it so wishes – to hold the debate on the draft EU budget, before the adoption of Council's first reading position. The Committee's scrutiny of the draft EU budget, and of the Government's proposed approach to it, is important. Not only does it enhance transparency and democratic accountability for the Government's actions in EU negotiations; it also adds to the Government's own process of formulating policy towards the EU's proposed budget for next year. The UK is a significant net contributor to the EU budget, and there are large sums of funding involved; this dossier must therefore be of substantial interest to Parliament.

I am keen to do all possible to ensure that scrutiny can take place on the EU draft budget for 2011, and would be grateful for your advice on whether there are any further steps that I can take to bring this about.
29 June 2010

The Committee has asked me to thank you for your letter of 29 June 2010 about scrutiny of the 2011 Draft EU Budget. It realises that normal parliamentary scrutiny of the document has been delayed and is grateful for enquiry as to what you might do in relation to this. Nevertheless, as you will see from the report of our meeting today, we have decided to deal with scrutiny of the budget in the normal way, albeit with a delayed debate.
8 September 2010

Re: EM 13645/09, 13648/09, 13652-4/09, 13656-8/09: European Supervisory Authorities and European Systemic Risk Board

Letter from Mark Hoban to the Chair

I am writing to provide a further update to your Committee on the European Commission's proposed legislation to establish new EU Supervisory Authorities (ESAs) and a European Systemic Risk Board (ESRB), as the legislation is now reaching its final stages of agreement.

You will remember that I wrote in June to update you on negotiations. In that letter, I set out that while the Government supported an agreement in line with the December 2009 ECOFIN agreement, the Government could not support the European Parliament's ECON committee amendments to the draft legislation, which sought to establish European Stability Funds, European Guarantee Schemes and EU level supervision of all significant cross-border financial institutions.

Similarly, the Government was determined to ensure that the European Banking Authority (EBA) would be located in London, where the European Parliament had pressed for Frankfurt, and that central counterparties (CCPs) would not be supervised at the EU level.

In this context, the Government welcomes the package of legislation that was voted through the European Parliament on 22 September, and which will come back to the Council for final agreement shortly. This revised text ensures that day-to-day supervision of financial institutions will remain at the national level, establishes that the new ESAs cannot take decisions that impinge on Member States' fiscal responsibilities, and improves the legal issues in the Commission's original proposals. It also ensures that the new authorities have requirements for high standards of governance, transparency and accountability. Finally, EBA will be based in London, and there is no proposal in the text for CCPs to be supervised by an ESA.

This new European framework has the potential to fundamentally improve the quality and consistency of supervision, ensure more effective rulemaking and enforcement, and better identify risks in the financial system, and the Government therefore supports it. We have seen from the recent crisis that reform is necessary: Our experience of the Icelandic banks operating branches in the UK, where the FSA had little or no oversight, and where there was no mechanism to ensure supervisory quality in the home Member State, demonstrates that there are unacceptable failings in the current cross-border arrangements. The new arrangements will improve cross-border supervision, provide mechanisms for us to ensure supervisors are complying with their legal obligations, and ensure national supervisors are of high quality. While facilitating better co-ordination of supervision, the final agreement ensures that national governments and regulators retain their frontline responsibility to protect the national taxpayers' interest. These proposals are supported by the City, and in particular cross-border institutions operating from London.

Further detail on the proposals

As you will know, the legislation establishes three new European Supervisory Authorities (ESAs) - the European Banking Authority (EBA) to be based in London, the European Securities and Markets Authority (ESMA) to be based in Paris, and the European Insurance and Occupational Pensions Authority (EIOPA) to be based in Frankfurt - and the European Systemic Risk Board (ESRB), also to be based in Frankfurt.

The ESAs will play a key central role in ensuring high quality supervision in Europe. In particular, they will have, within the framework provided by directives, a strong independent rulemaking role by setting strong and rigorous standards for national supervisors to apply, a role in enforcing rules and, in the unusual event that a

national supervisor ignores an ESA law-enforcement decision, the ESA would be able to directly instruct firms. They will ensure greater supervisory quality by setting high quality guidance, undertaking peer review and facilitating cooperation. They will have powers to settle disagreements between supervisors, and to take coordinating decisions in emergencies over supervisors. We believe that these measures will help ensure that the high standards of supervision and regulation evident in the UK apply across Europe.

It has also been agreed that the ESAs will be able to ban products, but the Government ensured such provisions were only temporary and Member States can appeal in a procedure requiring a Qualified Majority Vote (QMV) to support a ban. Finally, the ESAs will have powers to supervise credit rating agencies (as agreed in December), given their unique status in financial markets.

The European Systemic Risk Board (ESRB) will act as an effective macro-prudential early warning system, issuing warnings on significant risks and, where appropriate, recommendations on how to mitigate such risks, working closely with the new structures being established in the IMF/Financial Stability Board. Responsibility for taking action in respect of these identified risks will continue to rest with national governments and supervisors.

Overall, the agreement represents a very good outcome for the UK, and is broadly in line with the general approach agreed at ECOFIN in December 2009.

Now that the proposals have been agreed by Member States, the focus moves to establishing the bodies by January 2011. This includes ensuring that other legislation proposed by the Commission does not undermine the compromise achieved here. The Government intends to be fully involved at all stages in ensuring these bodies are successful.
11 October 2010

Letter from the Chair to Mark Hoban

The Committee has asked me to thank you for your letter of 11 October 2010 about developments on this draft legislation. It was grateful for the information.
27 October 2010

Europe 2020: UK draft National Reform Programme

Letter from Lord Sassoon to the Chair

Attached for your information is the UK‘s draft National Reform Programme NRP, which was issued to the European Commission on 22 November. This draft is required as part of the Europe 2020 Strategy; the Government will issue a full NRP in April 2011.
23 November 2010

HM TREASURY SCRUTINY PERFORMANCE

Letter from Justine Greening to the Chair

I am writing with regard to HM Treasury‘s overall performance on the submission of explanatory memoranda to the EU scrutiny committees – although this is a matter that has not yet been raised directly with me by your committee.

I am aware that we have submitted a number of EMs late, with some left outstanding for months. This is not the standard of service that I wish for the Committee and, with officials, I am working hard to set the situation straight now and for the future.

There are a number of reasons for the delays, including increased workload and clerical errors; we have taken steps to address these problems, including measures to help prevent mistakes from occurring.

We have tried to limit the business implications of delays by processing EMs with tight Council deadlines ahead of those that are for information only. We have also tried to redistribute work internally.

In the meantime, I want to reassure you that Parliamentary scrutiny of EU dossiers remains very important to the Government and we will do all we can to facilitate the process.
30 November 2010

Letter from the Chair to Justine Greening

The Committee has asked me to thank you for your letter of 30 November about the Treasury‘s failures in relation to the production of Explanatory Memoranda. The Committee has noted your initiative on this, your explanation and your remedial actions and hopes to see an improved performance. It will of course be keeping its eye open for that improvement.
9 December 2010

EUROPEAN UNION. FINANCES WHITE PAPER

Letter from Mark Hoban to the Chair

I have pleasure in enclosing the Government's Annual White Paper on the EU Budget - European Union Finances: Statement on the 2010 EU Budget and measures to counter fraud and financial mismanagement. This is the thirtieth in the series.

The report covers annual budgetary matters and recent developments in EU financial management. It describes the EU Budget for 2010 as adopted by the European Parliament, and details the United Kingdom's gross and net contributions to the EU Budget for calendar years 2004 to 2010 and financial years 2004-05 to 2015-16, consistent with the Office of Budget Responsibilities' latest forecast.

I hope that you will find this report interesting and useful.
16 December 2010

EU BUDGET: MULTI-ANNUAL FIANCIAL FRAMEWORK REGULATION: UPDATE

Letter from Justine Greening to the Chair

On 6 November, I wrote to you regarding the Government's position on proposals for a regulation laying down the multiannual financial framework (MFF) for the years 20072013, which I expected to be raised during conciliation negotiations on the EU budget for 2011. While broadly endorsing the Commission‘s and Presidency's technical approach to transposing existing EU budgetary rules into a new MFF regulation, I noted that, given tight fiscal and wider economic conditions, the Government intended to seek to limit the cost exposure of flexibility mechanisms in the EU budget.

As anticipated, the issue of flexibility in the EU budget was raised during conciliation, with the European Parliament pushing strongly for greater and more costly flexibility mechanisms. In particular, negotiations focused on the Presidency's proposals to establish a contingency margin of 0.03% EU GNI that would sit entirely above, and in excess of, the MFF ceilings. These proposals were a significant change from existing arrangements, whereby flexibility to revise the MFF by 0.03% has usually resulted in no overall increase to the MFF ceilings. Rather, it has been used to move money between budgetary headings beneath the MFF ceilings in order to accommodate unforeseen expenditure.

Of course, it is important to take the opportunity to limit the UK's potential cost exposure over the next few years, when deficit reduction is the Government's priority, and to reflect the period of deep fiscal consolidation throughout the EU. Therefore, the Government sought to alter the Presidency's proposals in order to limit risks to budget discipline and reduce cost exposure. The Government received significant support from other Member States for this objective.

As a result, on 22 December COREPER agreed to establish a 'contingency margin' of €3.5bn annually, created outside the MFF and accessed by qualified majority voting. However, in a given year, the contingency margin can only be used up to the amount already available under the total MFF spending limit, and not already budgeted in the year's annual budget. This establishes an important link to the MFF and reduces the budget exposure of the contingency margin, under qualified majority in Council, to only €2bn-€2.5bn over the rest of the current MFF. In effect, it ensures that use of the contingency margin is constrained by the MFF ceilings. Furthermore, a specific clause and separate, written Commission declaration state that no use of the contingency margin in 2011 can lead to additional payment appropriations that year; this protects the agreement to limit growth in payments to the EU budget in 2011 to 2.91 % from 2010 levels.

Having argued strongly to limit the expected cost exposure of any flexibility measures, the Government is satisfied that these final proposals improve on current flexibility arrangements. The text of the draft MFF regulation and the accompanying draft Institutional Agreement on cooperation in budgetary matters and sound financial management, were agreed in COPERER in late December. We expect Council to request consent to the draft MFF regulation from the European Parliament later this month, and hope that both instruments will be adopted early this year.
14 January 2011

Letter from the Chair to Justine Greening

The Committee has asked me to thank you for your letter of 14 January 2011 informing it of the outcome of the Council‘s deliberations on the proposed contingency margin.
26 January 2011

The Alternative Investment Fund Managers Directive

Letter from Mark Hoban to the Chair

In light of the political agreement on the Alternative Investment Fund Managers Directive (AIFMD) I thought it would be helpful to provide this Committee with an update on the final outcome, and how this compares to the Council's general approach and the European Parliament's committee positions.

As you are aware, the Council of Ministers reached a general approach on the AIFMD at the 18 May ECOFIN, which gave the Presidency a mandate to start negotiations with the Parliament. At this ECOFIN the Chancellor secured a minute statement that noted that some Member States still had concerns with certain aspects of the Council text, particularly in respect of the treatment of third countries, and called for the Presidency to take these into account when entering trilogies negotiations.

Throughout the trilogies discussions the question of third country funds' and managers' access to the EU continued to be the most contentious issue. The European Commission and the European Parliament both supported the extension of the European passport to third country managers and funds, while a majority of the Member States continued to oppose it.

However, this was by no means the only contentious issue and there were a number of other proposals that would have had a significant impact on UK interests, such as the provisions on depositary liability and proposals to bring passive marketing within the scope of the Directive.

Following intense discussions, political agreement was reached in ECOFIN on 19 October, with all Member States supporting the final text. The European Parliament voted in favour of this text, with some relatively minor amendments, on 11 November. Following translations and consideration by legal experts, the final text is likely to be formally adopted in the second quarter 2011. Member States will then be given two years to transpose the Directive into national law. In the interim, the Commission will in consultation with national governments, regulators, the European Securities and Markets Authority (ESMA) and the European Parliament - draw up detailed implementing measures which will also need to be implemented to the same timescale.

Third country provisions

As you are aware, the Government's strongly held view throughout these negotiations was that all AIFMs - irrespective of their or their funds' domicile - should be entitled to an EU marketing passport. This Government believed that this was essential in order to allow firms to realise the full benefits of the single market, and meet the G20 Commitment for financial regulation to be implemented in an internationally consistent and non-discriminatory way.

This view was strongly contested by others, who argued forcefully to restrict the passport to EU managers of EU funds - as set out in the ECOFIN general approach. In spite of this opposition, the Government engaged actively with other Member States, the Presidency, European Commission and Members of the European Parliament, and successfully argued for extending the passport to all managers and funds irrespective of their domicile. The final text therefore includes a provision for the passport for third country managers and funds to be introduced. Two years following the end of this transposition period, ESMA shall assess the functioning of the EU passport and advise the Commission on whether the passport should be extended to third country managers and funds. On the basis of positive advice from ESMA, the Commission shall extend the passport to third country managers, and managers of third country funds, through delegated acts. This will allow UK managers (many of whom use third country funds) to passport to EU investors without recourse to individual supervisors. It also ensures that the EU meets its G20 commitments of non-discrimination.

Whilst the extension of the passport to third countries was key for UK interests, the Government was also conscious that this was a new marketing regime, hitherto untested in this industry. The Government therefore strongly argued that national private placement rules – which provide a regime under which third country domiciled/managed funds can be marketed to EU investors on the basis of national rules – should be allowed to run in parallel, until such time as the passport could be proved to be a workable and effective alternative. The Government also considered that a premature termination of national private placement regimes would potentially negatively impact on UK investors' access to third country AIFMs - affecting investment returns - and hinder funds in developing countries in particular from marketing to EU investors. The European Commission and the European Parliament in particular strongly argued in favour of an immediate end to national private placement regimes. However, the Government successfully argued that prematurely terminating national private placement risked damaging EU investor access to third country AIFMs at a time when affected industries were adapting to the Directive's new rules. As part of the final political deal, national private placement regimes are maintained on implementation. The provisions on national private placement in the Directive only provide for minimum harmonisation and therefore allow Member States to impose stricter rules if they wish. The Directive requires that third country managers of third country funds comply with the requirements on transparency and private equity disclosure, that there are appropriate cooperation arrangements in place between the supervisor of the third country manager and fund and the EU supervisor and finally, the third country where the fund and manager are domiciled must not be listed as a non-cooperative country by the Financial Action Task Force on anti-money laundering and terrorist financing. For EU managers of third country funds, there are equivalent provisions but EU managers must comply with all the requirements of the Directive except for the detailed provisions on depositaries.

National private placement regimes may only be terminated a minimum of three years after the marketing passport has been extended to third country managers and funds (as outlined above). After this period has elapsed, ESMA shall assess the functioning of the third country passport and issue advice on terminating the national private placement regimes.

In formulating its advice, ESMA shall consider, inter alia any potential negative effect on investor access or investment in or for the benefit of developing countries. ESMA's terms of reference had previously been cast more narrowly, focusing more on questions such as systemic risk, which risked leading to an unbalanced assessment that neglected these important considerations. If ESMA considers that there are no significant obstacles to terminating the national private placement regimes, the Commission do so through delegated acts. It should be added that if, for some reason, the Commission does not exercise its delegated act to extend the passport to third country managers and funds, then it cannot exercise its delegated act to end national private placement regimes.

The deal brokered on third countries represents a very significant advance for UK interests when compared to the Commission proposal, EP proposals and ECOFIN general approach. The structure of regulation agreed meets the G20 commitments which was an extremely important objective for the Government and benefits the UK in particular as a global centre for alternative investment fund management.

Depositary Requirements

(i) Level of liability

There is now a more proportionate level of liability for depositaries than provided for in the previous Council text. The ECOFIN general approach would have required a high level of liability to be placed on depositaries that would have increased costs on affected industries, potentially increased systemic risk (by requiring banks to take on liability for loss of assets outside of their control), and would have been disproportionate.

The Government successfully negotiated a level of liability that is workable and more appropriate for the AIFM industry, and professional investors. Again, this was in spite of significant support for a very high level of liability. Liability can in some instances and subject to contract also be transferred to a sub-custodian where the depositary has delegated the custody of some of the assets: this is an important provision to allow continued investment by AIFs in emerging markets (many of which require the appointment of a local sub-custodian).

(ii) Scope of the depositary requirements

The agreed text requires all EU AIFM managing an EU fund to use a single EU depositary. However, the agreed text limits the extent to which the depositary rules apply under national private placement regimes (as this is minimum harmonisation and Member States are free to impose stricter requirements). Member States would therefore retain discretion to disapply most of the depositary rules to EU managers of third country funds who use private placement - the Directive only requires the manager to ensure that it has in place entities to carry out the depositary functions of safe-keeping, administration and the monitoring of subscriptions and redemptions. In this way these managers can broadly continue with their current operational structure until such time as the private placement regime is reassessed. This is particularly significant to the UK, as a large number of UK managers use funds in third countries.

(iii) Non-EU depositaries allowed for non-EU AIF

The text requires an EU AIF to have a single depositary established in the same Member State as the AIF. For a non-EU AIF the depositary may be an entity established in the third country where the AIF is established, or in the home Member State of the manager or in the Member State of reference of the manager. A third country depositary can only be appointed if it fulfils a number of requirements, inter alia that the third country's legislation on depositaries provides for effective prudential regulation and supervision which are to the same effect as the provisions laid down in European Union law and that appropriate supervisory cooperation arrangements are in place. This provides sufficient flexibility whilst providing a higher regulatory standard for non EU depositaries than at present.

Private Equity

The European Parliament proposed a range of requirements that would have had a detrimental effect on the private equity industry, and would have risked depriving firms of much needed capital during economic recovery. The Council resisted proposals to bring acquisitions of SMEs into scope, to ban leveraged buyouts and to introduce disproportionate reporting requirements on private equity firms acquiring a stake in unlisted companies.

The Parliament also proposed to apply the capital adequacy regime under the Second Company Law Directive to a target company acquired by a private equity fund. This was also resisted by the Council as it would have

competitively disadvantaged private equity compared to other ownership structures. As a compromise, the final text does, however, include provisions to prevent asset stripping of the target company, which is a far more proportionate response to the EP's stated policy intent of encouraging private equity to take better account of the interests of the target company and its employees.

The final text requires notification to be made by the AIFM to the supervisor, of major holdings in target companies when the proportion of voting rights reaches or exceeds 10%, 20%, 30%, 50% and 75%. When control of a target company is acquired (50% of a non-listed company and for issuers control as defined in Article 5(3) of Directive 2004/25/EC on takeover bids) the AIFM shall notify and disclose certain information to the target company, its shareholders and the supervisor. The AIFM shall request that the board of directors of the target company also pass the information on to the employees. These measures are far more proportionate than those proposed by the European Parliament.

Delegation

The Directive imposes requirements on an AIFM that delegates the function of portfolio or risk management, administration, marketing and activities related to the assets of the AIF. There must be an objective reason for the delegation and it must be notified in advance to the supervisor. Specific rules apply when portfolio or risk management is delegated, for instance, where the delegation is given to a third-country undertaking, cooperation between the supervisor of the AIFM and the supervisor of the third country undertaking must be ensured.

Many of Parliament's proposals were burdensome and could have forced significant organisational changes in the industry e.g. they proposed restricting delegation of key functions only to other EU AIFMs and only allowing delegation to third country entities in respect of non-EU assets. The EP's more damaging proposals were not successful and the Government believes that the final text represents a balanced approach.

Leverage

The topic of leverage caps was controversial, with the European Parliament proposing to give ESMA a significant role in this process and allowing it to set leverage caps on individual firms. The Government argued that the power to set leverage caps was best placed with national supervisors, considering their better understanding of their domestic market.

The final text represents a reasonable compromise and requires AIFM to set maximum levels of leverage in respect of each AIF it manages. Supervisors shall use the information on leverage provided by the AIFM to assess the overall level of leverage in the system and associated risks. If the supervisor considers it necessary, it may introduce limits to the levels of leverage employed by a particular AIFM. The leverage information collected by the national supervisor shall be shared with other supervisors and EMSA. ESMA can, where it considers there is a substantial risk to stability and integrity of the financial system, advise national supervisors on remedial measures. Where the supervisor decides not to follow the advice given by ESMA, it shall give reasons for this.

Scope

The final text introduces a threshold which is not, as in the earlier Council proposal, to the discretion of Member States. The Directive shall only apply to AIFM which manage portfolio of AIF whose assets under management in total do not exceed a threshold of EUR 100 million. The threshold is EUR 500 million when the AIF are not leveraged and have no redemption rights exercisable during a period of 5 years following initial investment. There are also exemptions for those firms who will be exiting the industry relatively shortly after the end of the transposition period.

The final text usefully clarifies that holding companies and joint ventures are not caught by the Directive. However, the exact scope of the Directive is not entirely clear and will need to be determined in the national implementation of the Directive.

This Directive will not introduce any restrictions on passive marketing as the European Parliament had

proposed. The Government argued that rules on passive marketing would be disproportionate and unworkable. This Directive will consequently only regulate active marketing and passive marketing rules will remain at the discretion of national supervisors. As a compromise, it was agreed that a future review would consider the issue of passive marketing.

Remuneration

The Directive will impose restrictions on the amount and form of remuneration that an AIFM can pay certain categories of staff. The AIFM shall apply the rules in a way that is consistent with the size, internal organisation and nature, scope and complexity of the activities. Some key requirements include that at least 40% and, in some cases, 60% of variable numeration must be deferred over at least three years. There is also a requirement that at least 50% of variable remuneration is paid in units or shares in the relevant AIF which should also be subject to an appropriate retention policy. The scope of the provisions also extends to carried interest and includes provisions on claw-back arrangements.

The final text represents a compromise between the Council and Parliament text but, crucially, contains the proportionality provisions agreed in the Capital Requirements Directive.

Short Selling

While the Council general approach did not include any restrictions on short selling, the Parliament proposed to amend the Market Abuse Directive. The Government is pleased that the final text does not include any provisions on short selling as this would have risked creating an unlevel playing field. As the Committee is aware, on 15 September the Commission adopted a proposal for a harmonised regime on short selling, which the Government believes is the more appropriate legislative instrument for such policy considerations.

Role of ESMA

The role of ESMA in relation to the AIFMD was also a hotly debated topic. The Government was committed to ensuring that ESMA's role should not be extended in the AIFMD beyond what had been agreed in the package on financial supervision. Other Member States argued that giving ESMA direct supervisory powers should be a precondition for extending the passport to third country managers. According to the agreed text ESMA has been given power to adopt technical standards and guidelines in a number of areas, for example, the minimum content of the cooperation arrangements between supervisors. It may also act as a mediator, in particular in cases where one Member State disagrees with the assessment of another Member State on whether certain criteria are fulfilled in relation to third countries. ESMA will receive information from national supervisors, have a coordination function and give advice to supervisors, in particular on levels of leverage. Crucially, ESMA's powers in respect of direct interventions are extremely limited- the agreed text stipulates that ESMA may request supervisors to take action against individual third country managers where there is a substantial threat to the functioning and integrity of the financial market or to the stability of the financial system and the supervisor had not at its own initiative taken such measures or they have not been sufficient. This is within the scope of the broad powers conferred to ESMA as part of the package on financial supervision.

Review

The text provides for a review of the Directive four years after the end of the transposition period. The Commission shall base its review on public consultation and discussions with competent authorities. The review shall analyse the Directive's impact on investors, on AIF and AIFM, both inside and outside the EU and how far the objectives of the Directive have been achieved and, if necessary, propose appropriate amendments. The text specifies a number of issues that the Commission should consider in its review and includes the impact on investor access and the impact on investment in or for the benefit of developing countries, which in the Government's opinion, are extremely important elements of the review.

Level 2

The AIFMD will include extensive Level 2 and 3 provisions. The Commission shall adopt delegated acts in a

number of areas and in particular on operating conditions, organisational requirements, delegation and leverage. Also, the Commission shall adopt delegated acts in relation to the depositary rules and in particular, decide on whether the prudential regulation and supervision in third countries is equivalent to that which applies to EU depositaries. There is also extensive power granted to ESMA to adopt technical standards and guidelines. The Government, working closely with the FSA, will continue to argue for an outcome of the level 2 process that is workable and proportionate and does not put UK industry at a competitive disadvantage.

I hope that the Committee has found this a helpful summary of the outcomes on the key issues of the Directive.
28 January 2011

Letter from Mark Hoban to the Chair

The Committee has asked me to thank you for your letter of 28 January 2011 giving a very full account of the outcome of the negotiations on this draft Directive. It was grateful for the information.
9 February 2011

EM 15375/10: An EU Framework for crisis management in the financial sector

Letter from Mark Hoban to the Chair

Further to the above mentioned Explanatory Memorandum (EM), I am pleased to enclose the UK response to the European Commission's consultation on proposals to introduce an EU framework for bank recovery and resolution. The response was developed in conjunction with the Bank of England and the Financial Services Authority. The deadline for responses to the Commission concluded on 3 March.

Our response follows the key points summarised in my EM and is supportive the Commission's work in this important area. We welcome the main features of the proposed EU framework, agreeing that it is crucial that all Member States have a common legislative framework to respond to financial crises, with credible tools and powers to intervene quickly to avert or manage the failure of a bank, to reduce the cost of bank failure. I note that some aspects of the Commission's proposed framework appear to borrow heavily from current UK legislation in this area.
11 March 2011

Letter from the Chair to Mark Hoban

The Committee has asked me to thank you for your letter of 11 March 2011 drawing its attention to the joint Treasury/Bank of England/Financial Services Authority response to the Commission's consultation on this important matter. It was grateful for this information and will, of course, wish to scrutinise carefully the Commission's legislative proposal, once it emerges.
16 March 2011

EMs 14515/10, 14512/10, 14496/10, 14497/10, 14498/10 and 14520/10 on economic governance in the European Union

Letter from Mark Hoban to the Chair

I refer to the above legislative proposals, which were debated by the House on 10 November last year and have thus now cleared scrutiny.

These proposals were the subject of discussion by ECOFIN at its meeting on 15 March, where general approach texts were agreed on all six proposals. I am writing to update you on the significant changes that were agreed.

Proposed Directive on Budgetary Frameworks

The Council agreed that Articles five, six and seven of the proposed Directive would not apply to the UK. These are the provisions that set requirements on the design and application of domestic numerical fiscal rules, including that Member States have numerical fiscal rules in place that take into account the Treaty reference values of three per cent and sixty per cent of GDP respectively. A Recital has been inserted into the draft legislation recognising that, by virtue of the UK's Protocol opting out of the single currency, these values are 'not directly binding' on the UK. It further recognises that the Protocol similarly precludes the application to the UK of an obligation for multiannual budgetary objectives in medium-term budgetary frameworks to be consistent with Stability and Growth Pact thresholds.

These Articles were the basis for the concerns we had previously expressed relating to subsidiary and the possibility of an infringement of the UK's fiscal sovereignty. I am therefore delighted that Council has recognised the UK's unique position in relation to the Treaty in this respect.

Alongside this decision, the European Commission has confirmed in a letter to the UK that transposition of the Directive need not involve Member States enacting national legislation. The letter further confirms that the Commission does not consider there to be any serious deficiencies in the UK's fiscal framework and that in several areas it can be considered an example of EU best practice. The letter also welcomes the Government's creation of the OBR and the improved transparency and credibility it provides. I believe this is an excellent outcome for the UK and I am particularly pleased at the Commission's acknowledgment of the UK's strong domestic fiscal framework.

Regulations on strengthening the surveillance of budgetary positions and the surveillance and coordination of economic policies, and on speeding up and clarifying the implementation of the excessive deficit procedure

The Council formally stated that in general it will follow the proposals or recommendations of the European Commission when making decisions relating to these Regulations. Where it does not do so, the Council will undertake to provide a written explanation of the reason for diverging from the Commission recommendations.

The Council also agreed that Member States should have increased discretion in deciding the level of risk from public liabilities to be reflected in medium-term budgetary objectives.

Overall, I believe the Council has struck the right balance. It is right and proper that the Council retains discretion on decisions regarding the Stability and Growth Pact. However, a general understanding that the Council will provide an explanation for where it departs from the Commission's recommendations then should help ensure that the rules are applied more consistently and effectively than occurred pre-crisis.

Regulation on the prevention and correction of macroeconomic Imbalances

The Council clarified that the Regulation would provide for a 'more formal and detailed' framework for the surveillance of macroeconomic imbalances, one which would operate within the existing Treaty mechanisms and procedures for surveillance under Article 121.

This is a useful clarification that I hope will help to assuage any concerns that the proposed legislation introduces new surveillance. As the Council has now made clear, the measures proposed would simply formalise surveillance already provided for by the Treaty and undertaken previously under the Lisbon Agenda and the Europe 2020 strategy.

The Council agreed that the Commission and Council should 'closely cooperate' in selling up the scoreboard

of indicators that will be used to monitor macroeconomic developments and the emergence of imbalances within and across Member States. In practice this may mean confirming the indicators in a code of conduct, along the lines of that which exists for the Stability and Growth Pact. Discussions are ongoing in Council on which indicators and 'alert thresholds' (that would highlight issues for further analysis) Member States agree should be used in the scoreboard.

The use of a Code of Conduct for the proposed macroeconomic indicators would be a sensible approach. It creates the flexibility necessary to respond to changing economic conditions over time without having to amend legislation. The legislation sets out only the procedure for adopting the scoreboard, and not the precise indicators and alert thresholds that will be used. However, the general approach contains some principles for the scoreboard that will guide ongoing negotiations on these, including that they should be 'differentiated' between euro-area and non-euro area Member States. The Government is of course actively engaged in these discussions on indicators and thresholds and I will write to you again in due course to advise you of the outcome.

The Council agreed with many of the main elements of the Commission's proposed 'Excessive Imbalances Procedure' comprising policy recommendations to Member States followed by reporting on corrective action. The Council clarified that an Excessive Imbalances Procedure would be closed when the Member State concerned had taken the recommended corrective action and Council agrees it to be no longer affected by excessive imbalances.

I understand the concerns of some Member States that excessive imbalances might persist even after all recommended corrective action has been taken, since they are not entirely within a government's control. However, the Government agrees that it is sensible that, in such circumstances, the excessive imbalances procedure should be held in abeyance rather than closed altogether.

Regulations relating to enforcement of budgetary and macroeconomic surveillance in the euro area

There was broad support for an amendment to the original Commission proposals on the treatment of fines and interest on deposits received from euro area countries under the Excessive Deficit Procedure or the Excessive Imbalances Procedure. The Commission had originally proposed that these should be redistributed among euro area Member States not in excessive deficit or excessive imbalance. However the amendment, subsequently formally agreed at March European Council, directs these funds into the European Financial Stability Facility or its successor mechanism, the European Stability Mechanism.

Whilst the Government broadly supports the concept of sanctions within the euro area, it must be primarily for the governments of those Member States affected to determine policy in this area. Nevertheless the Government is happy with the outcome of these discussions.
13 April 2011

Letter from the Chair to Mark Hoban

The Committee has asked me to thank you for your letter of 14 April 2011 about developments on these legislative proposals. It was grateful for the information.
27 April 2011

EMs 14496/10, 14497/10, 14498/10, 14512/10, 14515/10 and 14520/10 on economic governance in the European Union

Letter from Mark Hoban to the Chair

In April I advised you that ECOFIN had agreed general approach texts on these legislative proposals. I am now writing to update you on progress.

In the course of discussions with representatives of the European Parliament (EP) to reach agreement on the final texts, concerns were raised by Council on a number of areas. There were three issues in particular on which the EP felt very strongly and the Hungarian Presidency was unable to reach agreement. However, negotiations resumed under the Polish Presidency and I am pleased to report that a form of words was agreed with the EP at the end of September. ECOFIN approved the texts in October and, once work on their translation was completed, formally adopted them on 8 November.

I am setting out below details of the three areas on which negotiations over the summer were mainly focused.

Voting arrangements in the preventive arm of the Stability and Growth Pact (SGP)

As you are of course aware, the broad intention of the legislative package was to improve economic governance by strengthening the operation of the SGP. There are two elements to the SGP itself – its 'preventive arm' (Article 121), which involves coordination of broad economic policy through reporting and monitoring and aims to prevent the build-up of imbalances or excessive debt or deficit; and its 'corrective arm' (Article 126), which sets out the excessive deficit procedure for addressing situations in which excessive debt or deficit is found to exist.

The EP wanted to limit the extent of politicians' power in the 'preventive arm' when decisions are made that might lead to new disciplinary measures. Its proposals would have made it harder for the Council to reject the recommendations of the Commission; however a number of Member States were opposed to this.

The agreed compromise is that, where a Member State has previously been warned regarding its budgetary position and has received a recommendation for the necessary policy measures (under Article 121(4) of the Treaty), then, if the Commission subsequently recommends to the Council that it adopt a decision that no effective action has been taken, the decision will be made by normal QMV. However, if the Commission's recommendation is not adopted by Council, then after one month the Commission will be able to repeat its recommendation and the decision .will then be made by reverse simple majority (I.e. it will be deemed adopted unless a simple majority rejects the recommendation within ten days).

This assumption in favour of the Commission's recommendation, the time-limited opportunity to overturn it, and the need to mobilise a simple majority in order to do so, will mean that in future it will be slightly more difficult for Member States to avoid a decision that they have not taken effective action in response to policy recommendations. Of course, in the case of the UK - and other non-euro area Member States - such a decision will not result in any financial or other sanctions, as all such measures will apply to the euro area only.

The Government is satisfied that this is a suitably balanced solution. It provides for a modest increase in automaticity at the preventive stage, to complement the increased automaticity already agreed in the later stages of the Stability and Growth Pact; however it continues to recognise and respect ECOFIN's role in decision-making.

A political role for the EP in EU economic surveillance

The EP was keen to establish a role for itself in the surveillance process. ECOFIN was amenable to committing to keep the EP informed of progress and decisions under the process; however the EP additionally sought the power to insist on EU officials and representatives and national Finance Ministers appearing before its Committees.

The UK Government, in common with many of its EU partners, made it very clear that this would be unacceptable. The Government is, and must remain, accountable only to our national Parliament and there must be no question of any European process eclipsing this.

The agreed text respects this principle. It merely aims 'to enhance the dialogue between the Union institutions' and 'to ensure greater transparency and accountability', by acknowledging the EP's right to *invite* the President of the Council, the Commission and, where appropriate, the President of the European Councillor the President of the Eurogroup, to appear before its Committees, and to 'offer the opportunity' to Member States to engage with it.

Symmetry in the treatment of current account surpluses and deficits

The scoreboard and indicators are not set out in the legislation and are still under discussion (I have already undertaken to update you on the outcome in due course). The EP was keen to secure a commitment to the symmetrical treatment of current account surpluses and deficits. This has been an area of much - indeed continuing - debate between Member States. The Government's view is that both surpluses and deficits may be indicative of underlying imbalances that need to be addressed, but that this does not mean that they need necessarily be treated - or punished - equally.

Language agreed with the EP indicates that both upper and lower alert thresholds will generally be applied to the various indicators to be used, but acknowledges that surpluses and deficits may be assessed differently. This provides broad parameters within which discussions may continue, whilst enabling agreement on, and implementation of, the broader legislative package without further delay.

The Government welcomes agreement on this legislation. The UK's unique relationship to the SGP - by virtue of our Protocol opting out of the single currency - has been recognised by way of our partial opt-out from the Budgetary Frameworks Directive. New financial sanctions will apply to the euro area only, where the need for coordination and cooperation is greatest. However, there is a clear and urgent need for measures to protect and strengthen both the euro area and the wider European economy: this requires strong and responsible economic governance across the EU and I believe this legislation to be a very positive contribution.

For your information, I am enclosing copies of four reports on the European Parliament's first reading process which were recently received from the Council's Secretariat.
29 November 2011

Letter from the Chair to Mark Hoban

The Committee has asked me to thank you for your letter of 29 November 2011 about the outcome of these legislative proposals.
14 December 2011

EM 13840/10: Proposed Regulation on short selling and certain aspects of credit default swaps

Letter from Mark Hoban to the Chair

I am writing to update the Committee on the progress of the above Regulation, which proceeded to general approach at ECOFIN on 17 May 2011. I wish to set out for you in further detail, the passage of this proposal, in particular with respect to Articles 12 and 24.

Article 12 sets out restrictions applying to uncovered short sales of shares. The restrictions in relation to uncovered short sales of sovereign debt are now set out in Article 12A. The Government had particular concern surrounding the proposed restrictions on sovereign debt, and especially the prospect that uncovered short sales of sovereign Credit Default Swaps (CDS) might be subject to restrictions.

Following negotiations in Council, the text agreed at general approach for Article 12A does not impose permanent restrictions on uncovered short sales of sovereign CDS. The restrictions in relation to uncovered short sales of sovereign debt remain. However, the impact of those restrictions is significantly reduced by the exemption given to market makers and authorised primary dealers in Article 15. In addition, a 'soft locate' rule for the borrowing of securities has been included, which ensures that where the person entering into a short sale has a reasonable expectation that settlement can be effected when it is due, the restrictions on uncovered short selling will not apply. This provision applies to both sovereign debt and equities.

On Article 24, the Government emphasised the importance of ensuring that the powers conferred on ESMA are legally robust. We supported short selling proceeding to general approach, but only on the basis that the UK's concerns in this area were acknowledged. Consequently, the Commission and Council produced a

written statement as confirmation of their commitment to work during trilogues with the European Parliament to find a solution taking into account the concerns expressed by Member States regarding the powers of ESMA in Article 24.

The trilogue process, which began on 23 May, will continue throughout June. I will, of course, provide a further update of our progress upon completion.
6 June 2011

Letter from the Chair to Mark Hoban

The Committee has asked me to thank you for your letter of 6 June 2011 about developments on this legislative proposal. It was grateful for the information.
22 June 2011

EM 13840/10; Proposed Regulation on short selling and certain aspects of credit default swaps

Letter from Mark Hoban to the Chair

The European Commission's proposal for a Regulation on Short Selling and certain aspects of Credit Default Swaps (CDS) was discussed in Council working groups and a general approach was agreed at ECOFIN on 17 May 2011. Trilogues between the Presidency, European Commission and European Parliament began on 23 May and have now concluded. Following the last Trilogue a text is expected to be agreed at COREPER on 10 November as an I point reflecting the general endorsement given by the European Council in its conclusions of 23 October.

In my letter of 6 June I updated you on the passage of this proposal, in particular with respect to Articles 12 and 24. During Trilogues there has been some movement in these articles which I have explained below.

Article 12 and 12a

Article 12 and 12a set out restrictions applying to uncovered short sales of shares and sovereign debt, respectively. The text agreed at general approach for both articles included a 'soft locate' rule for the borrowing of securities, which ensures that where the person entering into a short sale has a reasonable expectation that settlement can be effected when it is due, the restrictions on uncovered short selling will not apply. The short selling of sovereign debt (Article 12a) retains the position agreed at general approach, however, during Trilogues the text for equities (Article 12) has lost some of this flexibility.

The text agreed at Trilogues for Article 12 (equities) now requires the short seller to enter into arrangements with a third party confirming that the share has been located, and to take other measures vis-a-vis third parties giving it a reasonable expectation that settlement can be effected when it is due. During Trilogue negotiations the European Parliament had pushed for a 'hard locate' where a short seller must have located and reserved the share he intends to short sell. This could have significantly impaired liquidity in the market tying up a large volume of securities that may never be borrowed. The text agreed provides more flexibility than the 'hard locate' because although the short seller will need to prove that he has 'reasonable expectation' of effecting settlement when it is due, he does not have to reserve the share.

Article 12b

The Government had particular concern surrounding the introduction of restrictions on sovereign CDS and the market detriment that this could cause. The text agreed at general approach did not impose restrictions on uncovered short sales of sovereign CDS. However, concerns were raised at ECOFIN by some Member States around the short selling of uncovered CDS on sovereign debt and it was agreed that this would be looked at during Trilogues. During Trilogue negotiations the European Parliament has strongly supported introducing restrictions around uncovered sovereign CDS. The text agreed at Trilogues proposes to put in place a ban,

which will automatically apply to uncovered sovereign CDS unless a Member State suspends the ban. The Member State will
only be able to do so where it can show that its sovereign debt market is not functioning properly, and that restrictions may have a negative impact on that market. The ban can be suspended initially for 12 months, and thereafter for six month periods.

We have worked to ensure that the proposed restrictions on uncovered sovereign CDS are workable and do not unduly impede the proper use of sovereign CDS as an instrument to hedge many types of risk. In particular, the impact of the ban is limited by Article 4 (1) of the regulation, which defines uncovered sovereign CDS. The effect of this article is that the restrictions would not apply in most circumstances.
These include:
• hedging against the risk of default of the sovereign issuer where a natural or legal person has a long position in the sovereign debt of that issuer; or
• hedging against the risk of a decline in the value of the sovereign debt where the natural or legal person holds assets the value of which are correlated to the value of the sovereign debt.

Article 24 and 24a

We supported the short selling proceeding to general approach, but only on the basis that the UK's concerns that powers conferred on ESMA in Article 24 should be legally robust were acknowledged.
Consequently, we achieved a Council-Commission commitment in the form of a statement at May ECOFIN that the concerns expressed by Member States regarding the lawfulness of the powers conferred on European Securities and Markets Authority (ESMA) in Article 24 would be taken into account during Trilogues. Despite this commitment our concerns regarding the lawfulness of Article 24 have not been addressed. Therefore the Government will not be able to support this part of the text to be agreed at Coreper on 10 November.

As explained in my letter of 1 March, we have significant concerns that as drafted, Article 24 - which confers powers on ESMA to choose between a range of measures which would ban or restrict short selling when ESMA considers that it is necessary to do so - would be unlawful
and contravene the principle set out in the judgment of the Court of Justice of the European Union in the case of *Meroni* '. Consequently, the Government will be considering how best to ensure legal certainty is provided.

Some progress has been made in that a new Article 24a has been introduced that provides a proper legal basis for ESMA to temporarily ban short selling of sovereign debt under Article 18 of the ESMA regulation. As a result, Article 24 now only applies to financial instruments other than sovereign debt. However, a consequence of the new Article 24a is that the Member State consent clause for a ban on short selling of their own sovereign debt was removed. Instead Member
States will rely on the protections under Article 18 of the ESMA regulation. Article 18 of the ESMA Regulation limits ESMA'S intervention powers to a situation where the Council, in consultation with the Commission, the European Systemic Risk Board (and, where appropriate, the European Supervisory Authorities), has declared an emergency. There are also a number of safeguards inherent in Article 18. For example, ESMA may only address decisions to competent authorities where coordinated action by national authorities is necessary and the decisions may only direct the authorities to act in accordance with existing legislation so as to ensure that the requirements of that legislation are satisfied. Finally, the fiscal safeguard set out in Article 38 of ESMA Regulation applies to decisions taken under Article 18 and means that ESMA cannot take decisions that has a material or significant impact on the fiscal responsibilities of Member States.

I hope that this further information is helpful. Following agreement at COREPER, the European Parliament is expected to vote on the text at Plenary in November.
31 October 2011

Letter from the Chair to Mark Hoban

The Committee has asked me to thank you for your letter of 31 October 2011 about the latest developments on this legislative proposal. It was grateful for the information.

9 November 2011

EM 8243/11: DRAFT AMENDING BUDGET NO 2 TO THE GENEREAL BUDGET 2011: STATEMENT OF EXPENDITURE BY SECTION: SECTION III: COMMISSION

EM 8244/11: DRAFT DECISION ON THE MOBILISATION OF THE EU SOLIDARITY FUND

Letter from Justine Greening to the Chair

I am writing to update you on negotiations of Draft Amending Budget No. 2 to the General Budget 2011 (DAB 2/11). You will recall that DAB 2/11 concerns the mobilisation of the European Union Solidarity Fund (EUSF) for EUR 19.5 million (£17.0 million) to provide aid in the wake of flood damage last year.

On 10 May 2011, I wrote to explain that the Government had succeeded in ensuring that DAB 2/11 would finance EUSF aid entirely via redeployments, rather than additional payments to the 2011 EU budget. The Council's position on DAB 2/11 was subsequently considered by the European Parliament's (EP) budget committee. On 24 May, the Council was informed that the EP had blocked DAB 2/11, owing to its preference to use new funds to mobilise the EUSF rather than undertake redeployments.

To resolve this situation, the Commission circulated a non-paper on alternative funding for DAB 2/11 earlier this month. Within the framework of budget implementation forecasts for 2011, the Commission identified EUR 352 million (£307 million) of under-spending in payment appropriations by year-end for energy projects to aid economic recovery, under the European Economic Recovery Plan (EERP). Of this amount, EUR 277 million (£242 million) is accounted for by operational implementation delays to seven energy networks projects: the remaining EUR 75 million (£65 million) owes to delays to the submission of payments requests this year. At present, the Commission considers that no EERP project is at risk of being abandoned and no de-commitments of EERP funds are anticipated. The Commission proposed to fund DAB 2/11 using part of this forecast under-spending on EERP projects, and invited the EP to consider amending DAB 2/11 accordingly.

In addition, the Commission also indicated that it intended, in parallel, to propose to use the remaining, forecast under-spending in EERP to:

- Replenish, as far as possible, the 'negative reserve', via a transfer. You will recall that EUR 182.4 million (£159.1 million) was put into the 'negative reserve' via Draft Amending Budget No. 1 to the General Budget 2011 (DAB 1/11), in order to finance the mobilisation of the EUSF for aid to Poland, Slovakia, the Czech Republic, Hungary, Croatia and Romania following heavy flooding last year.
- Reinforce the European Globalisation Adjustment Fund (EGF), for which only EUR 7.0 million (£6.1 million) in payments would remain available of EUR 47.6 million (£41.5 million) allocated in 2011, if all current applications are approved;
- Provide additional funds to manage migration and refugee flows, further to the recent developments in the Southern Mediterranean; and
- Transfer EUR 26 million (£23 million) within chapter 32 04 (Conventional and renewable energies), to cover additional needs for other programmes, notably for the Intelligent Energy – Europe programme.

The Commission's non-paper was first discussed in Council's budget committee on 14 June. The Government indicated its reluctance to reconsider Council's position on DAB 2/11. While it could agree to the Commission's proposal to fund DAB 2/11 via redeployments from EERP, the Government was not willing to do so as part of the wider set of redeployments envisaged by the Commission: aspects of the proposal not directly related to DAB 2/11 should be considered separately on their own merits. The Presidency committed to approach the EP to explore ways of resolving DAB 2/11 independently of other issues.

On 15 June the EP's budget committee decided to amend DAB 2/11 to use under spend on energy projects to: i) fund EUSF aid totalling EUR 19.5 million (£17.0 million); ii) replenish the negative reserve by EUR 182.4 million (£159.1 million); and iii) reinforce the EGF by EUR 50 million (£44 million).

The EP's position was unexpectedly put to Council's budget committee on 16 June. The Government maintained its position that DAB 2/11 should be treated independently from other issues. However, many Member States were willing to accept the EP's position and its amendments were approved by a qualified majority.

The substance of the EP's amendments is not a serious concern to the Government. First, there is no increase in the overall level of payments to the 2011 EU budget, which remains capped at 2.91% above 2010 levels. Second, although the Government opposed use of the 'negative reserve' for DAB 1/11 in favour of immediate redeployments, replenishing the negative reserve, in effect, executes such redeployments early. However, the Government is not keen to encourage repeated use of the negative reserve in-year, as this would weaken incentives for the Commission to undertake accurate ex-ante programming. Finally, the Government has become concerned by the frequency of applications to the EGF and supports redeployments to fund future requests: a transfer to replenish the EGF is a roughly equivalent outcome. DAB 2/11 will now progress to COREPER and the European Council, but substantive discussions are not expected. The precise timetable is not yet clear.

Finally, I would like to update your Committee on other developments in Council's budget committee last week:

- On 15 June, the Commission issued a proposal to draw down EUR 9.4 million (£8.2 million) from the EGF to fund two applications for support from Austria, relating to redundancies in its telecommunications and metals sectors owing the economic and financial crisis. An explanatory memorandum on this proposal will be deposited shortly. This proposal was approved in Council's budget committee on 16 June: the Government has placed a scrutiny reserve. This proposal will progress to COREPER and the European Council, but substantive discussions are not expected. The precise timetable is not yet clear.
- On 17 June, the Commission released a Draft Amending Budget No. 4 to the General Budget 2011, relating to funding to manage migration and refugee flows. Again, an explanatory memorandum on this proposal will be deposited shortly. This proposal was discussed in Council's budget committee on 21 June. Again, the Government has placed a scrutiny reserve.

21 June 2011

Letter from the Chair to Justine Greening

The Committee has asked me to thank you for your letter of 21 June 2011 about various matters dealt with recently by the Council's budget committee.

The Committee was grateful for the information about developments on the Draft Amending Budget No 2/2011 and the associated mobilisation of the EU Solidarity Fund.

However, the Committee was greatly disturbed by the information you give about the documents the Committee has not yet been able to scrutinise, on EGF applications from Austria and on Draft Amending Budget No 4/2011. Although the Government has, rightly, placed a scrutiny reserve on them, adoption by the Council's budget committee has in effect, with the prospect of no further substantive discussion, bypassed national Parliamentary scrutiny. The impossibility of proper scrutiny is exacerbated in these cases by the failure of the Commission and the Council Secretariat to observe the spirit, if not the letter, of the requirement in Article 4 of Protocol (No 1) to allow eight weeks between publication of a draft legislative act and its adoption by the Council.

Therefore the Committee should be grateful if you would take up with the relevant authorities in Brussels this matter, emphasising the importance of not circumventing national parliamentary scrutiny. We look forward to hearing from you about a positive response from your interlocutors. 29 June 2011

EM 8243/11 DRAFT AMENDING BUDGET NO 2/2011; EM 8344/11 EU SOLIDARITY FUND; EM 11502/11 & EM 11504/11 EUROPEAN GLOBALISATION ADJUSTMENT FUND; EM 11774/11 DRAFT AMENDING BUDGET NO 4/2011

Letter from Justine Greening to the Chair

Thank you for your letter of 29 June regarding scrutiny of proposals on EU budgetary matters. In particular, you expressed concern at the speed with which recent applications to the European Globalisation Fund (EGF) and Draft Amending Budget No 4/2011 were adopted by Council's budget committee, which meant that, in effect, national parliamentary scrutiny was bypassed.

I absolutely share your frustration at the haste with which these and similar proposals are being taken through the Council's budget committee. This Government has been clear that we want to see real budgetary restraint in the EU over the coming years, as well as the longer term, in order to avoid unaffordably high costs to UK taxpayers. As part of this, it IS essential that EU expenditure is closely scrutinised on the basis of value for money by both the Government and Parliament. Of course, this takes time and should not be hurried.

Following your letter, the Government has already raised this particular issue with the Polish Presidency. On 5 July, the UK demanded an explanation of why Member States were given such a short time to consider recent EGF applications, and demanded assurances that appropriate notice shall be given in the future. This point was noted by the Presidency. However, I would note that other Member States do not seem to share our concerns and, when discussing dossiers subject to qualified majority voting, this hampers the Government's ability to hold dossiers at working level for scrutiny purposes. Nevertheless, the Government intends to press this point further with both the Council Secretariat and the Presidency and will explore the possibility of joint action with other Member States.

Lastly, the Minister for Europe has in the past raised the importance of observing the eight-week rule for national parliaments to scrutinise EU draft legislative acts with Baroness Ashton, the High Representative for Foreign Affairs and Security Policy of the European Union. I meet regularly with the Minister for Europe and shall explore other avenues by which the Government might reflect your concerns.
9 July 2011

Letter from the Chair to Justine Greening

Thank you for your letter of 9 July 2011 about the unacceptably hurried timetabling of matters before the Council’s budget committee. The Committee was grateful for your account of your efforts to correct this practice.

Nevertheless, it notes that you have not yet received a very encouraging response, whilst it recognises the difficulty of resisting inappropriate speed on matters subject to qualified majority voting. But it encourages you to redouble the Government’s efforts to persuade those concerned about both the practical consequences of rushed, and therefore inadequate, budgetary scrutiny and the reputational damage for the EU of undermining national parliamentary scrutiny.

The Committee looks forward to hearing from you in due course about a more positive response from your interlocutors.
13 July 2011

EM 8243/11 DRAFT AMENDING 8UDGET NO 2/2011; EM 8344/11 EU SOLIDARITY FUND; EM 11502/11 & EM 11504/11 & 11967/11 EUROPEAN GL08ALISATION ADJUSTMENT FUND; EM 11774/11 DRAFT AMENDING BUDGET NO 4/2011

Letter from Justine Greening to the Chair

Thank you for your letter of 13 July regarding scrutiny of proposals on EU budgetary matters; and the European Scrutiny Committee's report, also of 13 July, regarding Explanatory Memorandum 11967/11 on the European Globalisation Adjustment Fund (EGF) and the application for technical assistance at the initiative of the Commission. I am writing to update you on progress over the summer months.

Both your letter and the Committee's report encouraged the Government to redouble its efforts to voice concerns about the speed with which recent EU budgetary dossiers were adopted by Council's budget committee, undermining national parliamentary scrutiny processes. As you know, the Government takes this issue very seriously and is maintaining pressure to bring about positive change in Brussels.

Building on the Government's previous efforts, UK Rep in August wrote to the Council General Secretariat and the Polish Presidency setting out the Government's concerns and seeking assurances that the scheduling of business in Council's budget committee will return to a pace that allows Member States to fully consider proposals. This included a longer period for Parliamentary scrutiny before Council's position is finalised at working level. I am pleased to report that the Presidency has noted the Government's concerns In this matter and will endeavour to Improve future timetabling to accommodate better national scrutiny procedures where possible.

However, as I noted in earlier correspondence, few other Member States share the UK's concerns. This is in part due to minimal pressure from domestic parliaments in other Member States. In addition to the efforts of the Government, I would encourage your Committee to coordinate with national parliaments in other Member States to highlight this issue and the need for improvement.

The Government will continue to monitor timetabling of dossiers in Council's budget committee and will consider further action if there is no improvement.

With regards to the Commission's application for funds from the European Globalisation Adjustment Fund (EGF) for technical assistance, the Committee's report noted that it shares the Government's reservations regarding aspects of this application, and urged the Government to resist these elements at COREPER and the Council. This item went to COREPER on 14 July and to the General Affairs Council on 18 July. The Government abstained at the GAC in order to indicate that it did not agree to the substance of the proposals and also due to the dossier remaining under Parliamentary scrutiny.
21 September 2011

Letter from the Chair to Chloe Smith

I am writing in response to your predecessor's letter of 28 September 2011 about the unacceptably hurried timetabling of matters before the Council's budget committee. The Committee was grateful for this account of the Government's efforts to correct this practice.

The Committee notes that there has now been a rather more encouraging response from the Presidency. Nevertheless, it urges the Government to continue to monitor the situation and to respond robustly if there are renewed problems with timetabling.
19 October 2011

EM:14331/11 PROPOSAL FOR A COUNCIL IMPLEMENTING DECISION AMENDING IMPLEMENTING DECISION 2011177/EU ON GRANTING UNION FINANCIAL ASSISTANCE TO IRELAND

14332/11 PROPOSAL FOR A COUNCIL IMPLEMENTING DECISION AMENDING IMPLEMENTING DECISION 2011/344/EU ON GRANTING UNION FINANCIAL ASSISTANCE TO PORTUGAL

Letter from Mark Hoban to the Chair

I am writing to inform you of the steps taken by the Government to avoid a scrutiny override in relation to the above European Commission Proposals. As you will be aware, these proposals sought to reduce the interest margin on the European Financial Stabilisation Mechanism (EFSM) loans to Ireland and Portugal to zero and extend the average maturity on the loans to "up to 12.5 years".

As set out in the Explanatory Memorandum accompanying these proposals; the Government believes a strong and stable euro area is in our national interest and supports the steps taken by the Council of the European Union to achieve this. A lower interest rate charged on EFSM loans to Ireland and Portugal would, all things being equal, contribute to this objective.

However, the Government regrets that the European Council Secretariat opted to include the Proposals as an "I" Point at COREPER on 6 October and as an •A" Point at the General Affairs Council on 11 October.

Having produced and submitted an EM to Parliament in a timely manner and within the set deadline, the Government made strong arguments to EU partners that sufficient time should be allowed for national Parliamentary procedures to be followed.

The UK raised objections at all steps of the process, including:
• Officials of the UK's Permanent Representative to the EU were in constant communication with relevant European parties (the Council Secretariat, the Commission, and the rotating presidency) to raise our objections;
• An objection was made by senior HMT officials at the Economic and Financial Committee on 27 September (having also raised concerns ahead of the meeting);
• The Chancellor raised the issue at ECOFIN on 4 October;
• The UK Permanent Representative to the EU objected to the handling of the issue at COREPER on 6 October; and
• At the General Affairs Council on 11 October, where the points were adopted, the Minister for Europe raised an objection and abstained.

Since decisions regarding the EFSM are taken by qualified majority vote, we were unable to prevent the Council from adopting the decision before Parliamentary scrutiny was completed. However, the UK objection was recorded in the Council Minutes. These discussions took place during the Conference recess, at a time when the Committee was not sitting. Unfortunately, it is not always possible to align the EU decision-making process with the Parliamentary timetable.

I would like to take this opportunity to thank the Committee for considering these documents with expediency and taking into consideration the time pressure imposed by the Council, which enabled you to clear them from scrutiny on the 12 October 2011.
31 October 2011

Letter from the Chair to Mark Hoban

The Committee has asked me to thank you for your letter of 31 October 2011 about the events leading to adoption of the latest Council Decisions on the European Financial Stabilisation Mechanism in relation to Ireland and Portugal.

The Committee is grateful to the Government for its efforts to have the Council pay proper regard to the scrutiny rights of national parliaments. It encourages the Government to continue these efforts in relation to any similar problems in other cases.
9 November 2011

Letter from Mark Hoban to the Chair

UK response to the European Court of Auditors 2010 Report

In my Explanatory Memorandum on the ECA report, dated 29 November, I undertook to forward to you and your Committee a copy of the Government's official response to the Report. I have pleasure in enclosing a copy for your information.

February 2012

Letter from the Chair to Mark Hoban

European Court of Auditors: 2010 Annual Report (33335)

The Committee has asked me to thank you for your letter of 1 February about the Government's response to the European Court of Auditors' 2010 Annual Report. It suggests that you may wish to consider whether it would be helpful to Members if this response is included in the pack for the debate the Committee has recommended.

7 February 2012

Letter from Mark Hoban to the Chair

I would like to draw your attention to a recent development on the inter-governmental treaty establishing the new and permanent European Stability Mechanism (ESM). You will recall that euro area Member States signed the treaty establishing the European Stability Mechanism (the ESM treaty) on 11 July 2011. Negotiations on the ESM treaty were subsequently reopened to reflect the decision by euro area Heads of State and Government to amend some features of the ESM.

You may be interested to know that the revised ESM treaty was signed on 2 February by euro-area Member States; I have enclosed a copy of the Treaty. Please note that this document is not subject to Parliamentary scrutiny, and I am forwarding it for information only.

The ESM will be established on an intergovernmental basis between the 17 euro area countries. The UK will neither participate in, nor contribute to, the mechanism. The UK is not a signatory of the ESM treaty and as such, will not ratify the ESM treaty.

Nonetheless, the government supports the euro area's intention to put in place a permanent mechanism to deal with sovereign debt crises. A change to Article 136 of the Treaty on the Functioning of the European Union has been proposed to provide that euro area member states may set up the ESM. Although the provisions in the relevant article do not apply to the UK, any changes to the EU Treaties must be ratified by the UK and all other EU member states before they can enter into force. This Treaty change will be approved under the provisions of the EU Act 2011.

The FCO are currently working with Parliamentary colleagues to agree a ratification timetable, although the current intention is to ratify the decision in time for the Council's target date of 1 January 2013.

21 February 2012

Letter from the Chair to Mark Hoban

The Committee has asked me to thank you for your letter of 21 February enclosing a copy of, and commenting on, the revised Treaty on the European Stability Mechanism (ESM).

The Committee was grateful for the information you provided. However it notes that the commencement provision of the ESM Treaty suggests that it could be ready to come into force before the target date, 1 January 2013, for coming into force of the amendment to Article 136 TFEU, which is to allow the eurozone to have an ESM. The Committee should be grateful to know what plans the Government has to meet this contingency.

29 February 2012

From Mark Hoban to the Chair

EM 13284/11 + ADD 1-4, 13285/11 + ADD 1-2, 5876/12: EU RULES ON PRUDENTIAL REQUIREMENTS FOR CREDIT INSTITUTIONS AND INVESTMENT FIRMS

I am writing to inform your Committee of a change to the Council timetable for negotiations on the Commission's proposal to replace the Capital Requirements Directive (Directives 2006/48/EC and 2006/49/EC, as amended by Directives 2009/111/EC and 2010/76/EU), with a Regulation on prudential requirements and a Directive on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, together known as "CRD 4".

As the explanatory memorandum on the European Central Bank's opinion on the Commission's proposal for CRD 4 (5876/12) highlights, the Danish Presidency aimed to agree a general approach in Council at the March ECOFIN. However, the Presidency has recently removed CRD 4 from the March ECOFIN agenda. It is not yet clear how Council will finalise a negotiating position in the coming few weeks, but the Presidency remains committed to finalising an agreement on CRD 4 by June 2012.

I hope your Committee finds this update useful.

5 March 2012

Letter from the Chair to Chloe Smith

Remuneration of EU staff

I am writing on behalf of the Committee in respect of the debate which took place on the Floor of the House on 21 February on two European documents: draft Regulation adjusting, from 1 July 2011, the rate of contribution to the pension scheme of officials and other servants of the European Union; and Commission Communication providing supplementary information on the Commission report on the exception clause of 13 July 2011.

In the course of the debate a point was raised (HC Deb, 21 February 2012, cols 784-785) about whether the Court of Justice of the EU could be considered an impartial tribunal, in terms of Article 6(1) ECHR, when deciding disputes between the Council and the Commission on the rules pertaining to annual salary increases under the Staff Regulations. (You said in the debate that the Council had lodged a court case against the Commission for mishandling the 2011 salary adjustment.) The concern expressed was that, as judges of the Court of Justice are officials of the EU institutions, their own remuneration would be increased or decreased as a result of their decisions, so arousing a natural suspicion of bias.

I would be very grateful if you could explain, with reasons, whether this fear is founded or not.

7 March 2012

Letter from the Chair to Mark Hoban

Financial services: prudential requirements (33052) (33053) (33657)

The Committee has asked me to thank you for your letter of 5 March about the postponement of Council consideration of this matter. This means, of course, that the debate the Committee has recommended need not take place before 13 March. However you will be aware that it must take place before whatever new date for a Council decision is established.

7 March 2012

Letter from Mark Hoban to the Chair

EM 12386/10 DEPOSIT GUARANTEE SCHEMES DIRECTIVE

I am grateful to the Committee for clearing the Deposit Guarantee Schemes Directive (DGSD) from scrutiny in June last year. I am now writing to update you on discussions on the Directive in trilogues.

I regret to say that it has not as yet been possible to reach a satisfactory agreement between the European Parliament, European Commission and the Council on this dossier. The main point of difference between the institutions concerns the funding provisions, where the Parliament's proposals call for a pre-fund of 1.5% of deposits to be built up over 15 years. As you are aware, the Government's aim has always been to ensure robust, effective protection for depositors without imposing unreasonable burdens on the deposit-taking sector. The view of the UK and other member states is that the Parliament's approach fails to take into account differences in the structures of member states' banking markets and could risk imposing unjustified costs on deposit-takers, which would be likely to be passed through to consumers.

On 16 February 2012, the European Parliament voted to adopt the ECON committee's report as its formal first reading position. The adopted text is available at http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2012-0049&format=XML&language=EN. The Danish Presidency is now considering the best way to take the Directive forward. It is likely that the Council will now formally adopt its general approach and a second reading process will commence. The Council's general approach (agreed in June 2011) is fully in line with UK aims. Under the second reading process, the European Parliament has up to three months (extendable by a further month if necessary) to adopt, reject or amend the Council's first reading text.

The dossier was discussed briefly at the ECOFIN meeting on 21 February, at which the Chancellor of the Exchequer set out his view that further discussions on the dossier should take the Council's general approach as their basis.

While it is disappointing that an agreement has not yet been reached, I take comfort from the fact that UK depositors are already benefiting from the harmonised £85,000 deposit compensation limit agreed under the 2009 Deposit Guarantee Schemes Directive. The Financial Services Authority is also moving forward with reforms to aspects of the Financial Services Compensation Scheme not governed by the DGSD, and hopes to publish a consultation paper in the first half of this year.

The Government will continue to work with the European institutions and other member states to reach an agreement on this Directive which meets the UK's aims and promotes sound, effective depositor protection across the EU and EEA. I will of course provide a further update once the next steps on the Directive are agreed.
19 March 2012

Letter from the Chair to Mark Hoban

Deposit Guarantee Schemes

(31816) 12386/10

I am writing to say that the Committee was grateful for your letter of 19 March about developments on this draft Directive and that it looks forward to a further report in due course.

18 April 2012

Letter from Mark Hoban to the Chair

2011-12 UK Convergence Programme

I am writing to give you advanced notice of the Government's intention to publish the above document and explain its relevance to the debate that is planned to take place before the end of April, subject to the progress of Parliamentary business.

Article 121 of the 'Lisbon' Treaty requires the UK to submit an annual Convergence Programme to the European Commission reporting upon its fiscal situation and policies. The EU's deadline for receipt of the Convergence Programme is 30 April. This was set in accordance with the new European Semester combined timetable for both Convergence and National Reform Programmes. The Government supports the European Semester as an important development in the EU's overall surveillance framework.

The UK's Convergence Programme will be published in late April and will be submitted to the European Commission by 30 April.

Section 5 of the European Communities (Amendment) Act 1993 requires that the content of the Convergence Programme is largely drawn from an assessment of the UK's economic and budgetary position which has been presented to Parliament by the Government for its approval. This assessment is comprised of the Budget report and the Office for Budget Responsibility's Economic and fiscal outlook and it is therefore their content, and not the Convergence Programme itself, which requires the approval of the House for the purposes of the Act. This is the reason for the debate that will be held. The Government intends to schedule the debate before the end of April so that the approval required is received before the 30 April deadline to submit the Convergence Programme.

Copies of the Convergence Programme will be deposited in the Library of the House upon publication. The document will also be available electronically via HM Treasury's website.

26 March 2012

Letter from the Chair to Mark Hoban

2011-12 UK Convergence Programme

The Committee has asked me to thank you for your letter of 26 March about the Government's intention in relation to this year's Convergence Programme. Although your Written Ministerial Statement was made the next day it notes your attempt to give it advance notice.

18 April 2012

DEPARTMENT FOR WORK AND PENSIONS

13981/08: PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE APPLICATION OF THE PRINCIPLE OF EQUAL TREATMENT BETWEEN MEN AND WOMEN ENGAGED IN AN ACTIVITY IN A SELF-EMPLOYED CAPACITY AND REPEALING DIRECTIVE 86/613/EEC

Letter from Chris Grayling to the Chair

My predecessor wrote to the Committee on 16 March. I am writing now to update you on the latest developments on this directive and to advise you that the UK abstained from voting on the directive at the Transport Council on 24 June. However, the directive was adopted by qualified majority.

I can report that in the final text there were no significant concessions in Council beyond the first reading concession of providing a maternity allowance to assisting spouses.

Progress in negotiations

After second reading started, Member States resumed their discussion of the draft directive at Working Parties on 24 March and 20 April.

The UK, together with several other Member States, had difficulties with some of the European Parliament's proposed amendments, and successfully negotiated with the Presidency, Commission and key MEPs to minimise all the amendments which risked significantly extending the scope of the first reading Common Position agreed in November 2009.

The compromise text was agreed by all Member States with the exception of the UK and Hungary and was adopted as an A point at the Transport Council on 24 June.

The UK abstained because of its view that this directive goes against the general principle that Member States should have the freedom to decide how best to provide social protection. We also have concerns about any future directives that would affect this area. The UK abstention was agreed via the European Affairs Committee write round procedure.
I hope that this information is helpful. I have attached the final text of the directive for your information.
19 July 2010

Letter from the Chair to Chris Grayling

Directive on the equal treatment of men and women who are self-employees and assisting spouses (13981/09) (30021)

Thank you for your letter of 19 July Directive.

We are grateful to you for your progress report on the negotiations and for sending us the final text of the Directive, as adopted by the Council on 24 June.
8 September 2010

12892/08: I) PROPOSAL FOR A COUNCIL DECISION CONCERNING THE CONCLUSION, BY THE EUROPEAN COMMUNITY, OF THE UNITED. NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES AND II) DRAFT COUNCIL DECISION ON THE CONCLUSION, BY THE EUROPEAN COMMUNITY, OF THE OPTIONAL PROTOCOL TO THE UN CONVENTION ON THE RIGHTS OF PEOPLE WITH DISABILITIES

Letter from Maria Miller to the Chair

I am writing to update you on progress in respect of i) on the Code of Conduct referred to in the above proposal (which was cleared on 11 November) and ii) on the Proposal for a Council Decision on accession, by the European Community, to the Optional Protocol to the Convention, which remains under scrutiny. A draft Code of Conduct prepared by the European Commission has been subject to ongoing discussion with Member States, and this will continue in the autumn during the Belgian Presidency of the EU. The UK supports EU ratification but we, like other Member States, have concerns about the Code.

The Government's approach in negotiations is to ensure that the Code is consistent with and does not jeopardise the UK position in respect of other EU negotiations regarding external representation and implementation of the Lisbon Treaty. This includes: division of tasks based on EU and Member State competences for areas covered by the Convention; speaking in UN meetings; nominations to the UN Convention monitoring committee; monitoring and reporting arrangements for the Convention; and voting in elections for the UN monitoring committee.

My predecessor's letter of 14 December to Lord Roper, copied to Michael Connarty MP, suggested that the Commission would like to have the Code in place before the UN Conference of State parties in September 2010. Given that negotiations are ongoing this seems unlikely, but we anticipate that the Commission will aim to achieve agreement later in the autumn. With regard to the Proposal in respect of the Optional Protocol, negotiations

on this have not resumed, and we believe that they are unlikely to proceed before agreement on the Code of Conduct is reached.
23 July 2010

Letter from the Chair to Maria Miller

Thank you for your letter of 27 July about this draft Regulation.

We welcome the Commission's acceptance that the legal base for the proposal requires correction. Thank you for your helpful explanation of the stage reached in the negotiation of the substance of the draft Regulation. We should be grateful if you would write to us again when there is further progress to report. Meanwhile, the draft Regulation remains under scrutiny.
8 September 2010

COUNCIL DOCUMENT REF 13212/10: ON THE PROPOSAL TO EXTEND SOCIAL SECURITY RIGHTS TO THIRD COUNTRY NATIONALS

Letter from Chris Grayling to the Chair

I am writing to inform you of the Government's position on the above Commission Communication concerning the position of the Council on the adoption of a proposal for a Regulation extending the provisions of Regulations (EC) 883/2004 and 987/2009 to third country nationals not already covered by these provisions. Your Committee earlier cleared our Explanatory Memorandum on Council document 12216/07 from scrutiny.

Political agreement was reached at the EU Employment and Social Policy Council meeting on 7 June and was adopted at first reading by Parliament on 26 July. The UK has not opted in to this proposal. However, we wanted workers from third countries to retain their existing rights and reached agreement that the UK would continue to apply the old legislation (Regulation 859/03) to TCNs but that it would be repealed for other Member States.

The European Commission has now published a Communication to the European Parliament setting out the Council's position and how it differs from its original proposal. The Communication accurately reflects the UK position in so far as it notes that the UK has not opted in to the proposal; that there is a recital (No 18) stating that the UK is not taking part and that because the UK is not taking part in the proposal, we will continue to apply Regulation 859/03 and the Commission supports this as it achieves legal clarity.

I want to reassure you that the Communication is consistent with the UK position and does not raise any contentious issues. I am therefore content with the Communication.
27 September 2010

Letter from the Chair to Chris Grayling

Thank you for your letter of 27 September explaining the Government's position on the changes, set out in the Commission's Communication to the European Parliament, which the Council made to the Commission's proposal to apply an updated EU Regulation on the coordination of social security schemes for people moving within the EU to legally resident third country nationals. As you know, the previous Committee cleared the Commission's proposal – a draft Regulation – from scrutiny in October 2007.

We are particularly grateful to you for highlighting the inclusion of new Article 2. The Commission's original proposal specified that the draft Regulation would repeal and replace a 2003 Regulation. New Article 2 provides that the repeal of the 2003 Regulation only takes effect for those Member States (all bar Denmark and the UK) which are participating in the new Regulation. As the UK chose to opt into the 2003 Regulation, the effect of new Article 2 is to make clear that the UK remains bound by the 2003 Regulation, notwithstanding its repeal in 25 other Member States. We understand that Article 2 reflects the Government's desire to ensure

that workers from third countries retain their existing rights by making clear that the UK would continue to apply the measures on social security co-ordination set out in the 2003 Regulation.

Your letter raises a broader issue about the implications of ―repeal and replace‖ legislation in areas where the UK opt-in applies. For example, in the asylum field the Government has decided not to opt into Commission proposals to ―recast‖ two existing Directives from 2004 and 2005 determining who qualifies for refugee status and establishing harmonised asylum procedures. If adopted, the recast Directives would repeal and replace the 2004 and 2005 Directives – Directives which the UK opted into and which bind the UK. We would therefore welcome your views on the following questions:

(a) whether the solution adopted in the present case – the inclusion of an express provision (in terms similar to Article 2) limiting the scope of the repeal to Member States participating in the replacement measure – is necessary to preserve the binding effect of the earlier measure (here, the 2003 Regulation) for the UK; or

(b) whether the UK would remain bound by the earlier measure even without an express provision to that effect, simply by virtue of the fact that the UK has not participated in (and so cannot be bound by) the repeal effected by the replacement measure.
13 October 2010

PROPOSAL TO AMEND THE AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND THE SWISS CONFEDERATION ON THE FREE MOVEMENT OF PERSONS

Letter from Chris Grayling to the Chair

In my Explanatory Memorandum of 10th August, I explained that the Government considered that the proposal to update the Social Security provisions of the Swiss Agreement on Free Movement of Person contained measures pursuant to Title V (Art 79(2)(b)) of the Treaty on the Functioning of the European Union (TFEU). Therefore, in accordance with Protocol 21 to the Treaty, the UK had to decide whether to opt in to the measure. This letter is to inform you that the Government has decided not to opt in.

As you are aware, since 2002, Switzerland has been covered by the social security coordination Regulations as a result of Annex II to the Swiss Agreement on the Free Movement of Persons which applied, with modifications, the internal EU rules. A revised and updated EU Regulation on social security coordination (EC Regulation 883/04) came into force on 1 May 2010. The Commission therefore presented on 29 June a proposal (11630/10) to amend that Annex of the Agreement so that Switzerland would be covered by the new social security Regulation.

The proposal would extend social security rights to non-active people – i.e. those who have never worked in the EU rather than those who are not currently economically active – who move between Switzerland and the EU member states. At a time when we are considering measures to control public expenditure, we feel that, as a matter of principle, any extension of social security rights is unacceptable. As a result we have taken the decision not to opt in to the proposal.
I note that your Second Report, published on 24 September, raised questions about the legal base and the Government‘s reactions to the proposal. I will be replying to those questions shortly.
29 September 2010

Letter from the Chair to Chris Grayling

Thank you for your letter of 29 September informing us of the Government‘s decision not to opt into a draft Council Decision amending the provisions on the co-ordination of social security systems in the EU-Switzerland Agreement on the Free Movement of Persons.

We note that you intend to reply shortly to the questions which the Committee raised about the choice of legal base and the calculation of the deadline for notifying the Government‘s opt-in decision and we look forward to receiving your response.

13 October 2010

RE: EM 12119/10 & EM 9606110: DRAFT AMENDING BUDGET NO 7 TO TRE GENERAL BUDGET 2010 AND EUROPEAN FINANCIAL STABIUSATION MECHANISM

Letter from Justine Greening to the Chair

In my letter of 18 July, I explained that we had expected adoption of Draft Amending Budget No 7 to the EU Budget for 2010 at the 26 July General Affairs Council or Foreign Affairs Council. I also said that the Government felt it necessary, regrettably, to override scrutiny in this instance in order to support adoption of the Draft Amending Budget No 7. In fact, final adoption was slightly delayed, and took place at the 13 September General Affairs Council. My officials were in touch with your Committee Clerk in July to notify them of this slight delay. It continues to mean that full scrutiny of the Draft Amending Budget was unfortunately not possible before it was adopted by Council. However, I understand that the Committee has referred this document for debate, and I look forward to exchanging views on it with Committee members then.
27 September 2010

Letter from the Chair to Justine Greening

The Committee has asked me to thank you for your letter of 27 September 2010 about the latter date for the adoption of Draft Amending Budget No 7/2010.
20 October 2010

11063/09: PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL CONCERNING THE PLACING ON THE MARKET AND USE OF BIOCIDAL PRODUCTS

Letter from Chris Grayling to the Chair

I thought it would be helpful if I provided an update for the Committee on negotiations on the proposed European Regulation concerning the placing on the market and use of biocide products, and also provided the final UK Impact Assessment for the Regulation. The last update would be have been provided by the previous Government. You will be aware that the Committee is holding this dossier under scrutiny pending delivery of the Impact Assessment.

Negotiations in the Council Working Party on the Environment on this dossier commenced in July 2009 and are currently continuing under the Belgian Presidency. The Presidency has an aim of achieving political agreement in the Environment Council in December this year, and is currently leading negotiations intensively in order to achieve this. I will be writing to you again prior to political agreement. This will include a request for scrutiny clearance for the UK to offer any agreement.

The UK has been an active and influential player in negotiations and has put forward numerous drafting suggestions, many of which have been incorporated into the latest draft text. The UK‘s focus has been on the need to streamline and make more efficient the processes by which biocide products are authorised for placing on the market and use, without compromising the protection to human health and the environment that the biocides regulatory regime offers. Although overall picture is somewhat mixed, with some Member States favouring tighter controls on biocides more akin to the approach taken for plant protection products, the direction of negotiations has been broadly positive for the UK‘s more pragmatic, risk-based approach.

European Parliament consideration

The European Parliament (EP) has had a high level of interest in the proposal, and have been heavily lobbied by industry on aspects of the Regulation, tabling in total around 1000 amendments. On 21 September the

plenary EP vote took place, based on a package of around 360 amendments.

On specific issues, positive outcomes of the EP vote for the UK include:

 A vote in favour of a wide scope for EU Wide Authorisation, whereby (with a few exceptions) all biocide product types will be open to EU Wide Authorisation after an initial transitional period lasting until 2017;

 Support for around 100 amendments to the technical annexes to the Regulation, mostly aiming towards reduced testing on vertebrate animals and waiving data requirements;

 Defeat for an amendment to restrict use of a particular substance (difenacoum) used as an anti-coagulant rodenticides, which was subject to intensive industry lobbying and would have been particularly damaging for the UK; and

 Defeat for an amendment to increase the number of substances which are considered candidates for substitution, which had the potential to further restrict the biocide substances that are allowed on the market.

However, some less positive outcomes include votes in favour of some potentially burdensome additional administrative requirements, and some restrictive provisions on the use of nonmaterial's in biocide products.

Overall, the picture for UK is mixed, though with more positives than negatives on the most important issues. There are also signs of convergence between the views of Council and Parliament on several of the main issues. The possibility therefore remains of an agreement at second reading between Council and the EP, probably in the first half of 2011.

Impact Assessment

A full UK impact assessment has been commissioned for the Regulation from Entec UK ltd consultants, and is attached. The UK Impact Assessment identifies savings from improved product authorisation procedures and from provisions for data-sharing and data-waiving, though there are some increased costs as a result of the scope increase to cover treated articles and materials. Non-monetised benefits identified include an estimated increase in the number of biocide products which will be brought to market, and a reduction in animal testing.

Overall the Impact Assessment estimates that the Regulation as proposed by the Commission would lead to an overall cost saving of between £135m and £264m for UK industry over 10 years. The savings could potentially be greater if UK is able to secure further streamlining and simplification to the regime through drafting changes to the Regulation. The Impact Assessment has not yet been published, but it is intended that it will be made available on HSE's website in due course.

I hope this information is of benefit to the Committee.
13 October 2011

Letter from the Chair to Chris Grayling

Thank you for your letter of 13 October, attaching an Impact Assessment for this proposal, and providing an update on the current state of the negotiations.

It would seem from this that things are moving in the right direction, but we note that you will write to us again in December to seek scrutiny clearance in the light of the Belgian Presidency's efforts to achieve political agreement. We are therefore happy to return to the subject again then.
27 October 2010

Animal Testing of Cosmetics (31966) 13818/10

Letter from Edward Davey to the Chair

I am writing in response to your letter of 13 October 2010 which was in reply to my Explanatory Memorandum (EM) of 7 October 2010 on the European Commission's annual Report on the Development, Validation and Legal Acceptance of Alternative Methods to Animal Tests in the Field of Cosmetics (2008). Unfortunately, we have been unable to trace your original letter, hence the delay in responding and for which I apologise. I may though be able to give you more information in reply, than I would have had available to me last October.

You quite rightly identified that there have been difficulties with both the 2009 and 2013 deadlines to phase out animal testing in cosmetics. In respect of the two outstanding areas from the 2009 deadline, tests for eye irritation and acute toxicity, several alternatives have now been validated. These alternative tests, however, cannot fully replace animal testing. Nevertheless, the 2009 marketing and test ban has come into force and as a result the industry must now rely on existing data.

In respect of the 2013 deadline, the Commission has published an experts' report which is available at: http://ec.europa.eu/consumers/sectors/cosmetics/files/pdf/animal testing/final report at en.pdf.) This report forms the basis of the 2009 annual report to the Council and the European Parliament (a new EM will be developed on this shortly). It concludes that despite the continued commitment of those involved in the research into alternative methods, developing and validating the remaining full replacement tests for repeated-dose toxicity, reproductive toxicity and toxicokinetics will not be possible by the 2013 deadline.

I stated that there were no policy implications arising out of the 2008 report because we considered that it was unlikely that it would lead to any proposals for a policy change. However, you have asked what the potential outcomes might be post the 2013 deadline. The conclusions of the Experts' Report suggest that because full and validated replacement tests will not be available, some animal testing may still be required for example to assess the safety of new ingredients and to defend existing substances that are already used for cosmetic purposes. The Commission is therefore examining the economic impacts should the deadline remain in force.

The Commission will therefore need to take a policy decision on whether to make a proposal on the postponement of the deadline (as the Directive permits) or to maintain it, as occurred in 2009. Its decision is expected by the end of this year.

The Government's policy towards animal testing is set out in the Coalition Agreement with regard to household goods and scientific research. I therefore hope that every effort can be made so that the 2013 deadline can be confirmed without adversely impacting the cosmetics industry. My officials are analysing both the scientific evidence and the potential impacts on the UK cosmetics industry ahead of the Commission's decision.

I hope that this is helpful. As mentioned earlier I will be sending a new Explanatory Memorandum on the 2009 report which will cover this issue in more detail.
30 September 2011

Letter from the Chair to Edward Davey

Thank you for your letter of 30 September about the implementation of the proposed ban on the animal testing of cosmetics ingredients.

We have noted that the situation regarding those elements due to come into force in 2009 has now been resolved, and that the position in relation to 2013 is dealt with in the most recent of the Commission’s regular implementation reports on which you will be providing an Explanatory Memorandum shortly.

In view of this, we will await that Memorandum before looking further at the testing arrangements for 2013, but, in the meantime, we are now content to clear without a substantive Report to the House the previous report produced by the Commission in September 2010.
19 October 2011

Council Document Ref 13212/10: on the proposal to extend social security rights to third country nationals.

Letter from Chris Grayling to the Chair

I am writing to inform you of the Government's position on the above Commission Communication concerning the position of the Council on the adoption of a proposal for a Regulation extending the provisions of Regulations (EC) 883/2004 and 987/2009 to third country nationals not already covered by these provisions. Your Committee earlier cleared our Explanatory Memorandum on Council document 12216/07 from scrutiny.

Political agreement was reached at the EU Employment and Social Policy Council meeting on 7 June and was adopted at first reading by Parliament on 26 July. The UK has not opted in to this proposal. However, we wanted workers from third countries to retain their existing rights and reached agreement that the UK would continue to apply the old legislation (Regulation 859/03) to TCNs but that it would be repealed for other Member States.

The European Commission has now published a Communication to the European Parliament setting out the Council's position and how it differs from its original proposal. The Communication accurately reflects the UK position in so far as it notes that the UK has not opted in to the proposal; that there is a recital (No 18) stating that the UK is not taking part and that because the UK is not taking part in the proposal, we will continue to apply Regulation 859/03 and the Commission supports this as it achieves legal clarity.

I want to reassure you that the Communication is consistent with the UK position and does not raise any contentious issues. I am therefore content with the Communication.

Proposal to extend social security rights to third country nationals (Council document ref 13121/10) (31936)

Letter from the Chair to Chris Grayling

Thank you for your letter of 27 October telling us that discussions are continuing across Government on the two questions we raised in our letter of 13 October.

We note that you will write to us again to inform us of the outcome of these discussions. We urge you to do so, and to provide us with a full response, as soon as possible.

DWP PRIORITIES DURING THE HUNGARIAN PRESIDENCY OF THE EU: JANUARY - JUNE 2011

Letter from Chris Grayling to the Chair

Now that the Hungarian Presidency of the EU is underway and it is clearer what business the Presidency is expecting to take forward, I would like to update you on my Department's plans and priorities over the coming months. This letter sets out the key dossiers that will be progressed. The Presidency's official Work Programme has now been published and can be found at:

http://www.eu2011.hu/priorities-hungarian-presidency And for the Employment, Social Policy, Health and Consumer Affairs (EPSCO) Council
at: http://www.eu2011.hu/employment-social-policy-heaI1th-and-consumer-affairsepsco
The Hungarian Presidency hopes to make progress on some key employment and social affairs items and have identified four priority areas;
• Europe 2020 strategy and the creation of jobs;
• Demographic challenges, ageing society;
• The European framework for the social and economic inclusion of Roma;
• Social protection and social inclusion.
Launching the Europe 2020 Strategy and the related European Semester will be an especially important task for the Hungarian Presidency. Their agenda includes looking at the issues of job creation, adopting resolutions on the Employment Guidelines, improving the employment of young people, the protection of workers from the risks arising from exposure to electromagnetic fields, the Antidiscrimination Direchve, demographic trends reconciling work and family life, child poverty and the social inclusion of Roma. Key presidency conferences will cover some of these subjects.

There will be relatively, little negotiation of legislation, with work on the Pregnant Workers Directive likely to be limited to a progress report, but the amendments to the Social Security Regulations will be of particular interest to the UK, and there is also a Decision to implement the proposed European Year 2012 for Active Ageing.

There are three Employment, Social Policy, Health and Consumer Affairs (EPSCO) Councils scheduled to take place during the Presidency. These will be held on 7 March and 19 May in Brussels, and 6-7 J1une in Luxembourg. Although we have provisional agendas for these meetings, the content is likely to change during the run up to each Council. My officials will provide your committee with annotated agendas and I will make the usual written statement in advance of, and report following, each Council meeting to set out the final outcomes that the Presidency will be aiming for, and how these fit with UK objectives.

Draft EPSCO Agenda - 7 March 2011

The main focus of this Council will be the preparation for the Spring European Council and a general approach to the Employment Guidelines will be tabled. There will be a discussion on the Pensions Green Paper and information items on the Progress of Equality, Electromagnetic Fields and the coordination of Social Security Systems. Council Conclusions will be adopted on:
• Contribution to the EU semester, Annual Growth Survey;
• Platform against Poverty;
• Improvement of the European Pact for Gender Equality;
• Posting of Workers.

Draft EPSCO Agenda - 19 May 20:1 1

This is an additional, half day Council, which will focus on a discussion and adoption of Council Conclusions on an EU Framework for National Roma Integration Strategies.

Draft EPSCO Agenda - 6-7 June 2011

At the June Council the Employment Guidelines and proposed European Year 2012 for Active Ageing, will be adopted, and the miscellaneous amendments to the Coordination of Social Security Systems will be tabled for general approach/political agreement. In preparation for the June European Council, the package of Europe 2020 measures, including the Employment Guidelines and the Employment Scoreboard will be debated. There will also be a proposal from the Presidency that 2014 be the European Year of Families. The Presidency will also provide a progress report on the Pregnant Workers Directive, Electromagnetic Fields and Equal Treatment.

Furthermore, Council Conclusions will be adopted on:
• Youth Employment;
• Child Poverty;

• The European Disability Strategy (2010-2020)
• And possibly on Demographic Change and Fami.ly Policies
We have established good contact with the key Hungarian Ministers and officials and will be working closely with them on their forward agenda. I look forward to continuing to work closely with your committee to achieve the necessary scrutiny clearance before any agreement at Council.
I hope you find this information helpful, and I will keep you informed of developments in preparation for the Councils in March, May and June.
24 January 2011

11063/09: Proposal for a regulation of the European Parliament and of the Council concerning the placing on the market and use of biocide products

Letter from Chris Grayling to the Chair

I am writing to give an update for the Committee on negotiations on the proposed European Regulation concerning the placing on the market and use of biocide products. In particular I would like to update the Committee on the Political Agreement that was reached on the Regulation in the Environment Council on 20th December 2010. You will recall that you released the dossier from scrutiny ahead of this.

As you are aware negotiations on the Regulation commenced in July 2009 and progressed intensively during the latter part of 2010 with the aim of achieving Political Agreement in December 2010. At the Environment Council on 20th December, all Member States supported Political Agreement, although Denmark, Austria and the Commission expressed some reservations and made statements. The UK has been active and influential throughout negotiations and the agreed text incorporates many drafting proposals made by the UK. The UK's overall strategy has been to argue for a pragmatic, risk-based approach which would streamline the processes for authorising biocides while maintaining the present level of protection to human health and the environment. This approach has been reflected in the agreed text, which the UK supported at the Environment Council.

I summarise the position reached on some of the main key issues in the Regulation below.

On exclusion criteria, the agreed text reflects the consensus among Member States that active substances with certain health and environmental hazards (e.g. carcinogenicity, or persistence, bioaccumulativity and toxicity (PBT properties)) should be excluded from use in biocides. The UK has successfully argued that there should be adequate risk-based derogations from this principle to take into account that inherently hazardous substances such as rodenticides may be required for beneficial purposes, for example, to address dangers to public health or to prevent damage to infrastructure. The UK resisted pressure from some other Member States to further restrict these derogations, and the agreed text reflects the UK's position.

On Union Authorisation, the UK has argued throughout that the proposed 'Union Authorisation' procedure, allowing EU-wide authorisation of certain biocide products, should be given a wide scope to maximise cost savings it offers to businesses who market biocides across the EU. Several other Member States have preferred a reduced scope or further restriction, however the agreed text is closer to the UK position, allowing most biocide product types to be subject to the Union Authorisation procedure after an initial phase-in period. The European Parliament is also seeking a broad scope for Union Authorisation.

On regulation of treated articles, the UK has pressed for a proportionate and sensible approach, which would give adequate protection to consumers and users of such articles but would not require the very large range of articles treated with biocides such as socks, towels, mobile phones, refrigerators, cars and ships to be subject to the full authorisation procedure as biocide products. The agreed text reflects the UK's approach, and retains a proposal made by the UK to exempt such articles from the full biocide authorisation procedure when their primary function is not as a biocide.

Although such articles are not treated as biocide products, a proportionate level of protection is maintained by requiring that they may not be placed on the market unless the active substances with which they have been treated are approved for use in biocides. This ensures that any active substances used to treat articles have been

subject to a rigorous assessment agreed at EU level, to ensure that they are efficacious and do not pose unacceptable r1isks to humans or the environment.

Agreement has also been reached on the other issues in the Regulation, including data sharing and data waiving, leading to reduced requirements for animal testing, on mutual recognition of authorisations, and on a simplified authorisation procedure for certain biocide products posing a lower level of risk.

Next steps

As you know the European Parliament considered the Regulation in its plenary meeting on 21 51 September, approving a package of around 360 amendments. The text on which Political Agreement was reached already reflects some of the points raised by the Parliament. After legal-linguistic finalisation of the text during the early part of 2011, I expect the Council's position at first reading to be formally adopted in summer 2011, and for this to be forwarded to the European Parliament around September 2011 for their consideration at second reading. The most likely scenario remains that Council and Parliament will explore the possibly of a second-reading agreement in the latter part of 2011, under the Polish EU Presidency (July-December 2011). Once agreed, the draft Regulation is due to enter into force on 15 January 2013.

I hope this information is helpful to the Committee. I will write again in due course to update the Committee on further developments as matters proceed towards a second reading deal.
18 January 2011

Letter from the Chair to Chris Grayling

Thank you for your letter of 18 January confirming that a political agreement on this proposal was reached by the Environment Council on 20 December 2010 on a basis satisfactory to the UK.

Whilst we have noted the position, we do not think this affects our earlier clearance of this document, or that there is any need for a further Report to the House. We are however grateful for your promise to give us an update on further developments.
26 January 2011

11063/09: Proposal for a regulation of the European Parliament and of the Council concerning the placing on the market and use of biocide products.

Letter from Chris Grayling to the Chair

Further to my letter of 18 January 2011, I am writing to update you on the latest position on negotiations on the proposed European Regulation concerning the placing on the market and use of biocide products. You will recall that the document was released from scrutiny on 14 December 2010, ahead of Political Agreement in the Environment Council on 20 December 2010. Since then, the Council's text has undergone legal-linguistic finalisation, with the Council adopting its first reading position on the dossier on 21 June 2011.

On 22 June, the Council published a statement outlining the extent to which its position included the approximately 360 amendments adopted by the European Parliament (EP) at its first reading on 22 September 2010. Over half of the Parliament's amendments have been included in the Council's position, either in full, in part or in principle. However, a significant number were rejected, mainly because they did not provide added value or clarity, were inconsistent with other amendments the Council had introduced, would introduce undue administrative burdens or would make the proposed Regulation unduly rigid.

On 16 August, the Commission issued a communication confirming that although its opinion does not coincide with the Council on all points, the changes introduced by Council are in line with the aims of the Regulation and it accepts the Council's position. The Commission has also produced a legislative financial

statement on the proposal, which sets out the costs to the European Chemicals Agency (ECHA) in Helsinki of operating the regime. The Commission and Council documents are attached with this letter.

Our initial assessment of the cost estimates is that they are excessive and out of line with the costs of operating the existing biocides regime. We have challenged the estimates and will continue to do so with the aim of reaching more proportionate costing for the Agency's work under the new regime.

I believe the Council's position at first reading is a positive outcome for the UK. Our priority for the remaining negotiations will be to defend many of the amendments that we previously secured. This will include maintaining derogations to exclusion criteria, so that the Regulation would take proper account of the fact that hazardous biocides such as rodenticides may be required for wider beneficial purposes, for example to maintain public health or to prevent damage to infrastructure. We will also seek to ensure that the definition of a biocide product remains pragmatic, thereby preventing the large range of treated articles which do not have a primary biocide function (items such as treated socks, towels, underwear, computer keyboards etc) from having to go
through the full authorisation procedure for biocide products, which we believe would be disproportionate and burdensome.

Next steps

The Council text is due to be formally transmitted to the EP at its plenary meeting from 26-29 September 2011. Its ENVI Committee will consider the Rapporteur's draft recommendation for a second reading of the dossier on 8th September and a vote is planned for 4 October.

We understand that the Polish Presidency hopes to reach an informal agreement on the text by the end of the year, with a formal second reading deal then concluded at the Environment Council in January 2012 under the Danish Presidency. In light of this timetable, the Commission has indicated that it intends to request a delay of the applicability date of the proposed Regulation until 1st September 2013.

I hope this information is helpful to the Committee. I will write again in due course to update the Committee on further developments as matters proceed towards a second reading deal.
27 August 2011

Letter from the Chair to Chris Grayling

Thank you for your letter of 27 August, drawing to our attention the Council's response to the amendments put forward by the European Parliament at its first reading, and to the Commission's subsequent response.

We have noted that the Commission accepts the Council's position, and that, although you have reservations about its estimates of the cost to the European Chemicals Agency in operating the regime, you regard the current position as positive from a UK point of view. We also note that the Polish Presidency is hoping to reach an informal agreement by the end of the year, with a formal second reading deal being concluded in January 2102.

We do not think these developments affect our earlier clearance of this document, or that there is any need for a further Report to the House. We were however grateful for your promise to give us an update on further developments.
7 September 2011

12892/08: i) Proposal for a Council Decision concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities and
ii) Draft Council Decision on the conclusion, by the European Community, of the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities

Letter from Maria Miller to the Chair

I am writing to update you on progress in respect of ratification of the UN Convention by the European Union (EU) as was originally set out in the above Proposal (which was cleared 10 November 2009) and ii) on the Proposal for a Council Decision on accession, by the EU, to the Optional Protocol to the Convention, which remains under scrutiny.

The EU formally ratified the Convention on 23 December 2010. As you are aware, a draft Code of Conduct to support the basis on which the EU would ratify, and which had been prepared by the European Commission, had been subject to discussion with Member States and this was adopted by EU Ministers on 2 December 2010.

The Code as adopted met the UK concerns that it be consistent with and not jeopardise the UK position in respect of other EU negotiations regarding external representation and implementation of the Lisbon Treaty. This includes: division of tasks based on EU and Member State competences for areas covered by the Convention; speaking in UN meetings; nominations to the UN Convention Monitoring Committee; monitoring and reporting arrangements for the Convention; and voting in elections for the UN Monitoring Committee.

Ratification of this Convention by the EU is an important step in demonstrating the Community's commitment to the human rights of disabled people, a commitment this Government shares.

With regard to the Proposal in respect of the Optional Protocol, negotiations on this have not resumed. There has been no indication from the Presidency nor the Commission about when this can be expected.

As you are aware, the European Commission has separately published a Communication on a new EU Disability Strategy 2010-2020 (16489/104 ADDS 1 – 2 COM (2010) 636) which was the subject of an Explanatory Memorandum laid before Parliament on 7 December 2010. The Strategy addresses implementation of the UN Convention by the European Community and Member States. As development of this progresses, including activities related to the Code of Conduct, the Government will examine the impact of actions carefully to resist activity which may be burdensome and legislative proposals will be considered against the subsidiary principle.
13 February 2011

OTNYR Proposals for Council Decisions on the position to be taken by the EU within the Association Councils established by the Association Agreements between the EU and FYROM; Tunisia; Algeria; Croatia; Morocco; and Israel with regards to the adoption of provisions on the coordination of social security systems.

Letter from Chris Grayling to the Chair

In your report of 15 September, you asked for clarification of the legal bases for the draft Decisions. You will also have seen the House of Lords European Union Committee's letter of 8 October and I have included my response to both Committees' questions in this letter.

You asked why Article 217 was no longer cited as a legal base for the current draft Decisions. The reason is because it was considered that the article was not relevant to the conclusion of those Decisions. Article 217 is a power for the Union to conclude international agreements and not a power for making Council Decisions establishing the position to be taken by the EU in an international forum.

On Article 218(6)(a)(v), you queried whether it should continue to be cited among the legal bases. My view is that this provision will be relevant to the conclusion of the Association Council Decisions but that it is not the

relevant procedure to be followed for the adoption of the draft Council Decisions on the EU's common position. I am content with the articles cited as the legal base in the current texts.

You also asked whether the choice of legal base might affect the Government's decision to opt in after adoption of the draft Decisions. In accordance with Article 4 of Protocol 21 attached to the Treaty of European Union and to the Treaty on the Functioning of the EU (the Title V Protocol) the UK may, subject to certain conditions set out in Article 331 (1) TFEU), opt in to these Council Decisions after they have been formally adopted. This is confirmed by Recital 10 of the Council Decisions which makes clear that the UK's decision not to opt-in is "without prejudice to Article
4 of the [said] Protocol".

It follows from this that in my view there are no implications following from the legal bases cited in the current texts for the UK's ability under the Title V Protocol to opt in to the Decisions following their adoption.

I shall now turn to the questions asked by the House of Lords European Union Committee.

The Committee asked why purdah prevented the Committees from being updated on the progress of negotiations until the Decisions had been adopted on 7 June. We made every effort to keep the Committees informed. The question of a new legal base was only proposed in the course of the negotiations and coincided with the General Election. After consulting the Clerks to the Committees my officials agreed that the most appropriate way to inform Parliament at that time was by way of an informal unsigned memorandum to be followed by a signed EM. The unsigned EM was sent on 13 May when the new House of Commons Committee had not yet been reconstituted. Whilst being fully aware of our obligations to the Committees, I sought to make sure that the supplementary EMs of 30 June and 28 July provided more information as the situation developed, particularly as this is a complex legal area without a clear precedent.

On the substance of our considerations, we were indeed exploring the implications of the precedent set by this action and we are still considering, some of those issues. We continued to be concerned about the implications of the text on the indexing of pensions and indeed the final text is not acceptable to us.

It also asked whether not opting in to the Decisions had any implications for those countries (Morocco, Algeria and Tunisia) with which the UK had no bilateral agreement. I believe we already meet the obligations set out in the underlying Association Agreements, and that the implementing provisions should cover the practical implications of reciprocal arrangements. I believe, too, that the current texts go beyond the scope of the underlying agreements. This means that migrants between those countries and other EU Member States will have more rights than migrants between those countries and the UK.

The Committee also asked whether the Government was satisfied with the outcome of the negotiations concerning the provisions of family benefits. As Jane Kennedy MP explained in her letter of 22 May 2008 to the EU Select Committee, nationals of Algeria, Morocco and Tunisia who are lawfully working in the UK are already entitled to both Child Benefit and the Child Tax Credit for children living with them in the UK because the EU Association Agreements with those countries explicitly provide for equal treatment in the field of social security.

In addition, nationals of Croatia, FYROM and Israel can claim Child Benefit by virtue of the UK's bilateral social security agreements with the former Yugoslavia and Israel. The real problem centred on nationals of Croatia, FYROM and Israel and access to the Child Tax Credit. Under UK domestic law, nationals of these countries who are subject to immigration control when in the UK are generally excluded from entitlement to the Child Tax Credit as a public fund.

The Association Agreements with those countries provide that workers shall receive "family allowances", a term which in EU 'law would cover Child Benefit but not the Child Tax Credit. However, the Commission's proposals for Israel, Croatia and FYROM referred to "family benefits", a wider term which would cover both Child Benefit **and** the Child Tax Credit.

In order to avoid any extension of Child Tax Credit entitlement to nationals of Israel, Croatia and FYROM who are subject to immigration control in the UK, Jane Kennedy indicated that the UK's negotiators would

seek to bring the Commission's proposals into line with the terminology used in the Association Agreements with those countries. This objective was achieved in the texts agreed at the June Council. We continued to contribute to the negotiations on the family allowance provisions in parallel with the wider discussions about the UK's opt-in.

Finally, the Committee asked for the rationale for the Government's position on subsidiary and that future EMs contain both a position and a rationale. The rationale in this instance is that as the original Agreements were concluded at EU level, Council Decisions on the implementing measures must also be made at EU level. I take note of the Committee's request that such a rationale be included in all future memoranda, and have asked my officials to ensure that this is done.

I will keep you informed of any future developments.
20 October 2010

Proposals for Council Decisions on the position to be taken by the ED in Association Councils established by Association Agreements between the ED and FYROM, Tunisia, Algeria, Croatia, Morocco and Israel with regard to the adoption of provisions on the coordination of social security systems (31875-80)

Letter from the Chair to Chris Grayling

Thank you for your letter of 20 October, which only reached us on 15 February.

We are grateful to you for seeking to clarify issues concerning the legal bases for the afore-mentioned draft Council Decisions which the Committee raised in its Second Report. However, the need for further clarification resulted from a lack of clarity in your Explanatory Memorandum of 28 July which said, for example, that Article 217 TFEU was one of the legal bases for the draft Decisions, even though it was not cited in the texts sent to us, and that the consent of the European Parliament would be needed "prior to the conclusion of Association Council Decisions." We are still uncertain as to the basis for considering that EP consent is required for decisions made by Association Councils.

However, as the draft Decisions have cleared scrutiny, the UK has exercised its right not to opt into them and the Government does not appear to be contemplating a post-adoption opt-in, we are content to let matters rest.

18257/10: Proposal for a Directive on the control of major accident hazards involving dangerous substances, known as the 'Seveso III Directive'

Letter from Chris Grayling to the Chair

I thought it would be helpful if I provided an update for the Committee on the *above* and also to provide the final UK Impact Assessment for the proposal. You will be aware that the Committee is holding this dossier under scrutiny pending *delivery* of the impact assessment. The Committee also identified that a key issue would be the scope of the new Directive, which in turn is partly dependent on the Commission's proposal to draw up new derogation arrangements and a safeguard clause.

This letter provides the conclusions from the UK impact assessment for the proposal and gives an update for the Committee on the progress of negotiations on the proposed Directive so far. I will be writing to you again later in the year before the European Parliament has its first reading on this proposal.

Conclusions from the UK Government impact assessment

A full UK impact assessment has been prepared with assistance from the Health and Safety Laboratory and ORC International and is attached. *Over* 10 years estimated costs range from £75m to £95m. This includes: the costs of aligning the Directive with the new regulation for classification and labelling of around £20m; costs to the operators of providing information to all those liable to be affected of around £20m; and an opportunity cost of time to the Competent Authority of the additional duties beings suggested of around £41 m. The impact assessment *reveals* more than a tenfold underestimate of costs by the Commission based on its preferred option.

Update on negotiations

As you may be aware, negotiations in the Council Environment Working Group (EWG) on this dossier began in February 2011 and are currently continuing under the Hungarian Presidency. The Presidency has recently and helpfully *revised* their ambitious timetable and now has a more realistic aim of delivering a progress report for the June Environment Council, with possibly an exchange of *views* amongst Ministers on the key issues. From then, it is likely that the Polish Presidency will look for a first reading deal towards the end of their Presidency.

The first read through of the proposal has now been completed by the EWG. The UK has been an *active* and influential player in negotiations. A *revised* text incorporating many of the UK suggestions has been issued and discussion will now centre on the key issues. The proposal is broader than originally envisaged. As you may recall, the main driver for a new Directive is the change of the chemical classification system used in the EU. This affects the legislation that the current Seveso **II** Directive uses to determine its scope. The proposed Seveso III Directive seeks to align Annex 1 (list of dangerous substances) with the new Regulation on classification, labelling and packaging of substances and mixtures (CLP). The proposal also includes other provisions. The key issues for the UK (and the majority of other Member States) currently concern four broad areas:

• Alignment of Annex 1 with CLP

There is no direct alignment for toxicity classifications, which has implications for bringing new sites in to the Directive and taking other sites out, regardless of major accident potential. An additional area of concern is self-classification of substances where there is potential for inconsistency between suppliers and this could lead to inconsistency in application of Seveso III. We are looking to achieve an alignment method that is easily understandable by duty holders and regulators alike.

• Correction mechanism

A correction mechanism is proposed to deal with the unwanted effects of alignment;
this is welcome but the methods proposed are politically sensitive. The proposal suggests that changes to Annex 1 would be effected by the EC using delegated powers. We are pushing for a practical correction mechanism that would preserve Member State autonomy.

• Information for the public

The proposal strengthens the provision of information to the public in line with the Aarhus Convention and other environmental Directives. There are significant costs associated with this for example, the requirement to make information available in an electronic format. The proposal would give the public more input into the decision making process in a number of areas, associated with a requirement for access to justice and the possibility of judicial review. Whilst agreeing in principle the need for better information provision, we aim to ensure costs are minimised and will argue that the requirement for access to justice is superfluous because the provisions concerned are largely covered by the Environmental Information Regulations 2004.

• Inspection

There are tighter standards and timescales which appear out of place in a goal-setting Directive.

European Parliament consideration

In the European Parliament, the Environment, Food and Public Health (ENVI) leads on the dossier, and the Internal Market and Consumer Protection (IMCO) and Industry, Research and Energy (ITRE) will be providing opinions. At a 13 April 2011 MEP workshop on Seveso **III,** the rapporteur concluded that the aim should be to maintain the same level of safety as under the Seveso II Directive and to complete the negotiations as quickly as possible in order to meet the deadline in 2015 when the new CLP legislation comes fully into force.

Consultations with interested parties

A cross Whitehall group has been set up and is working effectively to advise on the implications for wider government policy.

Consultation with industry and representative bodies is on-going. There is some industry concern at the potential complexity of the Directive, though currently there are no significant differences between industry and HSE's negotiating objectives. I hope this is of benefit to the Committee.
19 May 2011

Letter from the Chair to Chris Grayling

Thank you for your letter of 19 May, enclosing an Impact Assessment for this appraisal, and providing an update on the current state of play on the negotiations in Brussels.

We were grateful for this information, and will wish in due course to draw the content of the Assessment to the attention of the House. However, we note that you will be writing to us again later in the year, and we felt it would be sensible to wait until then before doing so. In the meantime, of course, the proposal remains under scrutiny.
22 June 2011

7591/11 Proposal for a Council Decision on the position to be taken by the European Union in the EEA Joint Committee concerning an amendment to Annex VI (Social Security) and Protocol 37 to the EEA Agreement

Letter from Chris Grayling to the Chair

Your Report No 40 (2010/11) published 20 September refers.

I am sorry that you believe there *have* been unacceptable delays in keeping the Committee informed. My intention has always been to write to you when there *have* been significant developments but I understand that you would prefer information to be transmitted more quickly so I will endeavour to meet this request in future.

I *have* now signed a Written Ministerial Statement which will be laid before the House at the earliest opportunity.

You asked why the legal base for the Swiss proposal was in Title V of Part III of the Treaty on the Functioning of the European Union (TFEU) whereas for the EEA it was Article 48 TFEU, when the aim of the proposals was so similar. As the Commission proposed the legal base and their Explanatory Memorandum was silent on this point, it is difficult to judge their precise reasoning. It is also the case that the Commission did not originally propose Article 79(2) TFEU as a legal base for the Swiss proposal1 and accepted that legal base only as a result of further discussions. It is therefore possible that the Commission fundamentally believes that Article 48 is the correct legal base for both proposals but was prepared to acquiesce to a different legal base in the context of
the Swiss proposal for reasons of what they perceived at the time to be pragmatism. What is absolutely clear, however, is the UK's view that our right to make a decision on an opt-in should not be bypassed when Title V is relevant to the subject matter of a proposal.

You also ask our view on the legal issues surrounding the validity of the Decision and request an outline of the main issues involved. The Joint Committee Decision has not yet come into force, pending the completion of Parliamentary procedures in Iceland and Liechtenstein. If that Decision does come into force before the Court rules on our challenge, then I propose to take a pragmatic approach, seeking appropriate legal advice on our obligations, if any, on a case-by-case basis.

You asked why the UK did not force a debate at the Council when this Decision on the EEA amendment was agreed. There was no support among other Member States for such a debate, and so we decided that the most effective way of making sure that our views were placed on record was through the Minute Statement.

The UK did not vote against the proposal because firstly it was still under UK Parliamentary Scrutiny and I had no reason or desire to override scrutiny. Secondly, as our view was that the appropriate legal base was Article 79(2)(b) TFEU, and the Government had taken the decision not to opt in, we had no vote to use.

You also asked why the UK did not invoke the emergency brake found in Article 48 TFEU, which was the final legal base for the Decision. The formal issue was, as the Committee recognises, that the Council Decision was not a draft legislative act and there was no 'ordinary legislative procedure' to suspend; consequently the emergency brake was not available. However, had it been available (I.e. had the measure been a draft legislative act), there would still have been a question over using the emergency brake in circumstances where we were questioning the applicability of Article 48 TFEU.

I note your support for our decision to mount a challenge to the legal base and I will continue to keep you informed of developments on this measure.
25 October 2011

Letter from the Chair to Chris Grayling

Thank you for your letter of 25 October which responds to a number of issues raised in our 40th Report.

As you know, the Committee welcomes the Government's decision to challenge the Council Decision in the Court of Justice, not only because it would establish the correct legal base but because it might also help to clarify the circumstances in which the UK's Title V opt-in applies, especially as regards EU measures which do not (as in this case) cite a Title V legal base.

However, the Committee considered that the adoption of the Council Decision last June raises some more immediate concerns which your letter does not fully address. These include:

Your Department's handling of the opt-in elements of the Council Decision, particularly in light of the Minister for Europe's Written Ministerial Statement of 20 January 2011 on enhanced Parliamentary scrutiny of the Title V opt-in;

Tactical handling of the opt-in within the Council;

The legal and practical difficulties associated with application of the Title V opt-in to international agreements; and

The Government's position on the validity of this, and any other EU measures, which it considers are subject to the opt-in but which do not cite a Title V legal base.

We believe that we are unlikely to make further progress on these matters through continued correspondence and therefore invite you to give oral evidence to the Committee in order to address these issues in greater depth.
9 November 2011

11951/11 Proposal for a Directive on the minimum health and safety

requirements regarding the exposure of workers to risks arising from physical agents (electromagnetic fields).

Letter from Chris Grayling to the Chair

I am writing to update you on progress with the negotiations on the proposed Directive on electromagnetic fields (EMF) and to set out the Government's position on the dossier in advance of the December meeting of the Employment, Social Policy, Health and Consumers Affairs Council (EPSCO). The Polish Presidency has listed the dossier for a possible General Approach at the meeting.

Since negotiations began, the Polish Presidency has proposed substantial changes to the Commission's proposal for a new EMF Directive. As a result, the proposal is now more complex and restrictive, particularly through the introduction of conservative exposure limits. These changes will undoubtedly increase the burdens on UK industry. These changes have also been introduced without consultation with stakeholders.

Whilst recognising the considerable work that the Presidency has put into this proposal, I am concerned over the direction that the Directive has taken. As such, I have made a number of interventions on this issue with the aim of building a blocking minority to prevent any premature agreement on this proposal and gain more time to resolve its outstanding issues. This has included meetings with the German Secretary of State for Labour and Social Affairs, Dr Ralf Brauksiepe, and Minister Paul De Krom, the State Secretary for Labour and Social Affairs, in the Netherlands. A blocking minority is in place. Work will continue to consolidate this in the build up to EPSCO.

The Presidency is seeking to agree a General Approach at the December EPSCO. Given the issues with the current Presidency text, the Government has pushed for this to be changed to a progress report. However, should the Presidency proceed with its plans, I am hopeful that our blocking minority will prevent any agreement.

I have also met with Commissioner And or, pressing him to provide clarity on the April 2012 implementation deadline for the original, discredited Directive. The Commission have stated they are assessing options, including another delaying Directive. I will continue to press the Commission to finalise their plans without further delay and to communicate these to Member States and stakeholders in order to provide legal certainty.

The Government will continue to consult a wide range of stakeholders on this Directive, including technical experts, industry groups, individual businesses and employee representatives.

I will provide you with further updates as negotiations progress. In the meantime, I will keep pressing for an outcome that is sensible, proportionate and does not introduce unnecessary burdens on UK industry, whilst still ensuring adequate worker protection. I will push for a sensible implementation deadline of at least four years. I will also continue to encourage all concerned to consider whether a non-legislative solution would be a more appropriate response to this challenging issue.
16th November 2011

Letter from the Chair to Chris Grayling

Thank you for your letter of 1 November informing us of recent developments in negotiations on the draft Regulation.

With regard to the proposed delegation of powers to the Commission, we note that Article 4 of the draft Regulation already makes provision for pilot projects to be carried out before a final decision on extending the IMI is taken. We should therefore be grateful if you could tell us whether the Government is seeking an amendment to Article 4 to require the Commission to undertake a pilot project where national experts consider it necessary, or whether the Government is content to rely on the process of consultation and cooperation set out in the Common Understanding in order to achieve this goal.

We also look forward to hearing what progress has been made on the data protection elements of the draft Regulation which you highlighted in your Explanatory Memorandum. Meanwhile, the draft Regulation remains under scrutiny.
23 November 2011

GOVERNMENT RESPONSE TO THE EUROPEAN COMMISSION CONSULTATION ON THE MUTUAL RECOGNITION OF PROFESSIONAL QUALIFICATIONS

Letter from Edward Davey to the Chair

I am writing to highlight the Government's response to a European Commission Green Paper on the Directive on the Mutual Recognition of Professional Qualifications (2005/36/EC).

The Green Paper consultation, which closed on 20 September this year, forms part of a broader review of the MRPQ Directive. As you may be aware, the European Commission aims to publish a legislative proposal on 20 December 2011, which will be followed by negotiations during 2012.

The UK Government's response to the Green Paper is attached, and can also be found online at http://www.bis.gov.uk/assets/biscore/europe/docs/e/11-1297-ecgreen-paper-professional-qualifications-directive-uk-response.pdf
30 November 2011

Letter from the Chair to Edward Davey

Thank you for letter of 30 November enclosing a copy of the Government's response to the Commission Green Paper on the modernisation of the professional qualifications Directive. We note that the Commission intends to publish a new legislative proposal to amend the 2005 Directive before the end of the year. Your response will provide useful material to assist with the Committee's scrutiny of the Commission's proposal.
7 December 2011

16993111: Proposal for a Council Decision establishing the position to be adopted on behalf of the European Union within the World Trade Organization (WTO) as regards requests under Article IX of the Marrakesh Agreement establishing the World Trade Organization (the WTO Agreement) for granting and/or extending certain waivers

Letter from Edward Davey to the Chair

I am writing to apologise for the lateness of the enclosed Explanatory Memorandum regarding the Marrakesh Agreement Waivers. We received notification of the proposal too late in the day to submit for clearance before Coreper on 29 November hence we decided to place a scrutiny reservation on the Item and abstained from the vote, the proposal was subsequently adopted as an A point at the Foreign Affairs Council on 5-6 December.

As you are aware my officials have been extremely busy preparing for the various accessions at this week's WTO Ministerial Conference which has further delayed the submission of this EM. We will make every effort in future to submit at the earliest possible opportunity.
17 December 2011

Letter from the Chair to Edward Davey

Thank you for your letter of 17 December, apologising for the lateness of the Explanatory Memorandum you have provided on this document, and explaining that you received notification of the proposal too late to submit for scrutiny clearance before COREPER on 29 November or the Foreign Affairs Council on 5-6 December.

Whilst we accept that our timetable of meetings would effectively have prevented our clearing the document before either of these meetings, it is not clear whether the UK abstained from the vote at both meetings, or only at COREPER — and, if the latter, why such a distinction should have been drawn. Also, since the document was deposited on 18 November, and did not require a very detailed explanation, we find it hard to see — notwithstanding the demand imposed by the recent WTO Ministerial conference — why it should have taken over four weeks to let us an Explanatory Memorandum.
11 January 2012

13983/08: Pregnant Workers Directive: Proposal for a Directive of the European Parliament and of the Council amending Directive 92185/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding.

Letter from Edward Davey to the Chair

I am writing to update you on the latest position regarding the Pregnant Workers Directive.

As the Committee will be aware, the European Commission published its proposal for amendments to the existing Pregnant Workers Directive (92185/EEC) in October 2008. The European Parliament eventually reached its first reading position in October 2010. The European Parliament's proposals went much further than the Commission's original proposal. Although amendments spanned the range of issues related to maternity leave and return to work, amendments which caused particular concern for Member States included the demands for 20 weeks' fully paid maternity leave and two weeks' fully paid paternity leave. In the UK, these would cost in excess of £2 billion per year in addition to the existing spend in this area. Our concerns are not limited to costs, the European Parliament's position seeks to impose maximum standards and a one size fits all model on Member States, which does not take account of the individual systems which Member States have developed to support working families.

Progress on the file has effectively been stalled since the European Parliament's first reading. At the December 2010 Employment Council the UK, along with seven other Member States (Denmark, Sweden, Germany, Netherlands, Estonia, Czech Republic and Slovakia) jointly signed a Minute Statement which called for a pause in discussion so that Member States could fully consider the impact of the European Parliament's position. Other Member States reflected these sentiments in oral interventions.

The Hungarian Presidency held some working groups in the first half of 2011. These considered some of the points of principle raised by the Parliament's amendments, including the inclusion of paternity and adoption leave within the directive. The consensus was that these provisions would not be acceptable. When the Hungarian Presidency gave their progress report at the June 2011 Employment Council, 14 Member States intervened to set out their concerns about the European Parliament's proposals and/or about elements of the Commission's original proposal. Chris Grayling, for the UK, said that the Council must not reach a Common Position unless and until the European Parliament gives a clear signal that it will change its position.

The Polish Presidency held a substantive discussion on the file at the Informal Meeting of Family Ministers in Krakow, Poland on 21 October, which I attended. Member States once more set out their opposition to the European Parliament's position. Many - including myself - commented on the costs of the proposals, particularly in light of the economic crisis, as well as raising concerns about subsidiarity and/or underlining that setting the rate of maternity pay must stay within Member States' competence.

The Presidency presented a summary of this discussion to the European Parliament on 28 October in response to an oral question from the Gender Equality Committee which sought to ascertain Council's latest position. MEPs who spoke at that debate gave a range of views, with no real consensus. Many, including the Rapporteur, signalled that they preferred to stick to their first
reading position. Others signalled some degree of flexibility, with some looking to the Commission's original proposal as a reasonable starting point for a compromise.

Following the oral question, the Polish Presidency held two working groups to gauge Member States' views on the positions set out by MEPs, and the scope for further discussion. The Presidency subsequently concluded that Council's openness to negotiations depends on the degree of flexibility that the European Parliament is prepared to show, and on clear and concrete indications on how the Parliament would take into account the Member States' views. This position
was set out in the Polish Presidency's progress report, presented to the Employment Council on 1 December this year.

We do not yet have any indication of the way the Danish Presidency intends to handle this file. I remain clear, however, that Council should remain firm in seeking movement from the European Parliament before considering whether any further progress can or should be made. I will continue to make these points in forthcoming discussions in order to ensure a good outcome for the UK.

I will update the Committee on any progress in due course.

16 December 2011

Letter from the Chair to Edward Davey

Thank for your letter of 16 December 2011 informing us of recent developments in the Council of Ministers, in light of the position agreed by the European Parliament at its First Reading on the Commission's proposal to amend the 1992 Pregnant Workers Directive.

We note that the main sticking points highlighted in your last update (in January 2011) appear to be no closer to a resolution. We therefore welcome your offer to provide a further progress report, especially when you have a clearer sense of the prospects of reaching a compromise agreement between the European Parliament and Council during the Danish Presidency.

11 January 2012

Letter from Chris Grayling to the Chair

DWP PRIORITIES DURING THE DANISH PRESIDENCY OF THE EU: JANUARY TO JUNE 2012

Now that the Danish Presidency of the EU is underway and it is clearer what business the Presidency is expecting to take forward, I would like to update you on my Department's plans and priorities over the coming months. This letter sets out the key dossiers that will be progressed.

The Presidency's official Work Programme has now been published and can be found at:

http://eu2012.dk/en/EU-and-the-Presidency/About-the-Presidency/Program-og-prioriteter

The Danes hope to make progress in several areas:

EU Social Security Coordination and Free Movement of Workers

A general approach on the miscellaneous amendments to the social security coordination regulations (883/04 and 987/09) was agreed in December, and the proposal is now with the Parliament. The hope is that the measure will be adopted during the Presidency.

Electromagnetic fields

The Danish Presidency will continue the negotiations on the proposed Directive to protect workers from the risks from exposure to electromagnetic fields (EMF). This is intended as the replacement for the 2004 EMF Directive, which, if transposed, would place unnecessary restrictions on certain industrial and medical activities, particularly magnetic resonance imaging. We will continue to work to secure a proportionate approach to dealing with the risks from EMF.

As there is a risk that the negotiations on the proposal might not be concluded by April, i.e. the transposition deadline of the 2004 Directive, we expect the Commission to propose another small Directive to further delay, by potentially two years, the transposition deadline of the original Directive. We welcome this as a sensible move to ensure we have the time necessary for the negotiations.

The EU 2020 strategy and the European Semester

The Europe 2020 strategy was adopted in June 2010 and aims to deliver smart, sustainable and inclusive growth. The strategy laid out five headline targets, including 2 targets relevant to the employment and social policy field:

- increasing employment of the 20–64 year old population to 75%, through, among others, higher employment of youth, the elderly, the low-qualified, and through the increased integration of legal migrants;
- promoting social inclusion, above all by reducing poverty and by eliminating the risk of exclusion for at least 20 million people.

The EU 2020 strategy also encompasses the co-ordination of member states' employment policies under article 148 TFEU. Surveillance of labour market reform is through the open method of co-ordination, a non-legislative instrument involving peer to peer review. Member states agree country specific recommendations at European Council level. These are non-binding and are intended to help identify reform challenges and inform the mutual exchange of good practice at member state level.

The Danish Presidency will take forward the European Semester process, monitoring progress towards the Europe 2020 targets and culminating in the agreement of country specific recommendations in June.

Officials are fully engaged in this process, in particular through work in the Employment and Social Protection Committees, to support sharing of information and good practice between Member States.

The EU Programme for Social Change and Innovation

The Commission has presented a proposal to create an EU Programme for Social Change and Innovation, as part of the new multi-annual financial framework for 2014-2020. The programme is a combination of three existing instruments:

- The PROGRESS programme, which supports common effort and efficient policy coordination between Member States within the areas of employment and social policy, in particular through exchange of information and good practice under the Open Methods. In the new proposal, PROGRESS actions are better aligned with the Europe 2020 strategy, for smart, sustainable and inclusive growth, with a heavier emphasis on evidence-based policy making.

- EURES (EURopean Employment Service), which aims to increase transparency in the labour market by making vacancies available in the EURES job mobility portal. EURES furthermore supports services providing information, counselling and guidance at national and transnational levels.

- The European microfinance facility, which helps unemployed individuals back into work through micro-credit loans, enabling them to set up their own business.

European Year for Active Ageing and Solidarity Between Generations

The Danish Presidency will advance a number of initiatives to promote the contribution of the elderly to society, i.e. through active participation in the labour market. Emphasis will be placed on bringing older people's knowledge and expertise into play, for example through flexible working conditions, competence development and health promotion – for the benefit of the elderly themselves and for the benefit of society in general.

EU Strategy for People with Disabilities

The Danish Presidency will ensure that the Council will discuss how the resources of People with Disabilities can be put to a more active use, including by increased use of modern aids.

Employment and Social Policy Council (EPSCO)

There are two Employment, Social Policy, Health and Consumer Affairs (EPSCO) Councils scheduled to take place during the Presidency. These will be held on 17 February in Brussels and 21-22 June in Luxembourg. Although we have provisional agendas for these meetings, the content is likely to change during the run up to each Council. My officials will provide your committee with annotated agendas and I will make the usual written statement in advance of, and report following, each Council meeting to set out the final outcomes that the Presidency will be aiming for, and how these fit with UK objectives.

Draft EPSCO Agenda - 17 February 2012

At the February Council, there will be an orientation debate on the Europe 2020 Strategy and Women on Company boards and a presentation by the Commission on the Legislative initiatives for Posting of Workers. The Presidency will provide information on the preparation of the Tripartite Social Summit, preparation for G20 – Meeting of Labour and Employment Ministers and the progress on equality between men and women in 2011. The Chairs of EMCO and SPC will also provide information on the work programmes of their respective committees.

Council conclusions will be adopted on the Annual Growth Survey and the Joint Employment Report in the context of the European Semester - Priorities for action in the areas of employment and social policies: political guidance in 2012

Draft EPSCO Agenda – 21/22 June 2012

At the June Council, there will possibly be general approaches on both Posting of Workers and European Union Programme for Social Change and Innovation. There will be an orientation debate on the Europe 2020 Strategy and progress reports on the European Globalisation Fund and the Anti-Discrimination Directive. The Presidency will provide information on the Presidency Conferences, Revision of the Working Time Directive, the G20 – Meeting of Labour and Employment Ministers and the Cypriot delegation will present information on their incoming Presidency Programme.

The Danish Presidency is planning three sets of Council Conclusions on:

- Europe 2020 Political Guidance on Employment & Social Policies in 2012
- Responding to demographic challenges
- Review of the implementation by the Member States and the EU institutions of the Beijing Platform for Action: Women and the Environment

We have established contact with key Danish Ministers and officials and will be working closely with them on their forward agenda. I look forward to continuing to work closely with your committee to achieve the necessary scrutiny clearance before any agreement at Council.

I hope you find this information helpful.

26 January 2012

Letter from Chris Grayling to the Chair

Recast of the EU Prior Informed Consent (PIC) Regulation for the import and export of dangerous chemicals (9896/11)

I last wrote to you on 1 February 2012 about the European Commission's proposed recast of the existing PIC Regulation (EC) No 689/2008 on the export and import of dangerous chemicals. You will recall you have kept the proposal under scrutiny pending resolution of the roles of Member States and the Commission in the Rotterdam Convention, and sight of the Impact Assessment.

The Impact Assessment accompanied my letter of 1 February. Since then, rapid progress has been made in the negotiations. The Council and the European Parliament have informally agreed a package of amendments that should pave the way to a first reading agreement. This will now need to be confirmed by the European Parliament and then the Council. The outcome is a text supported by the majority of Member States, including the UK.

Our concerns about the recast altering the balance of roles between Member States and the Commission when participating in the Rotterdam Convention have been successfully resolved, by making the Regulation neutral on who has responsibility for representing the Union, and acknowledging that both the Commission and the Member States have a role to play. This means that when participating in the Convention, Member States retain the ability to act in matters of their own competence. This ensures there is no change to the current arrangements – which is what we sought. With this settled, and the Government's support for the overall agreement, I would be grateful if the Committee would now consider releasing the document from scrutiny.

We expect the recast Regulation to be published in the Official Journal around April of this year and apply from October 2013.
27 March 2012

Letter from the Chair to Chris Grayling

Import and export of dangerous chemicals (32769) 9896/11

Thank you for your letter of 27 March, confirming that a package has been agreed which should secure a first reading agreement, and that the outstanding competence issue in relation to the Rotterdam Convention has now been resolved to the UK's satisfaction. In view of this, and of earlier confirmation you sent on 1 February that the impact of this proposal on the UK would be minimal, we are now content to release the document from scrutiny.

18 April 2012

Proposal for a Regulation of the European Parliament and the Council laying down harmonised conditions for the marketing of construction products: documents 10027/08,9459/10 and 5314/11

Letter from Andrew Stunell to the Chair

I am writing to inform the Committee that on 18 January 2011 the European Parliament adopted the Construction Products Regulation at Second Reading. The agreed text (Council document 5314/11) represents the outcome of informal trialogue discussions between the Council, Commission and European Parliament held in November and
December 2010.

Background

The Regulation concerns CE marking for construction products such as windows or insulation. It is an internal market measure, and provides a system of performance declarations based on harmonised EU standards and test methods which allows users and regulators to see the technical performance of a product presented in a harmonised way. The intention of this is to allow products to move freely across borders, and prevent Member States imposing additional national testing.

The UK has supported the Regulation (which replaces an existing Directive) on the basis that it will help clarify and simplify the whole CE marking regime, although accepting at the same time that this will represent a cost for some UK businesses. Therefore an important part of our negotiating position has been to argue for derogations and simplified procedures for some manufacturers (chiefly micro-enterprises and manufacturers of one off products).

My last submission on the Regulation was an Explanatory Memorandum on 23 June 2010, and the Committee lifted its scrutiny reserve on the Regulation at its meeting on 8 September 2010.

Agreed text

The Council adopted its Common Position on 25 September 2010. Following this, informal trialogue discussions were held to agree a Second Reading deal, which resulted in the amendments agreed by the European Parliament in January.

The amendments do not represent a substantive change to the Council text, and my view is that this is a good outcome for the UK. The most important parts of the text (the circumstances in which products have to be tested and CE marked, derogations from this requirement, and simplified processes for small businesses) are unchanged.

The main change is that the European Parliament has strengthened the requirements for products which contain hazardous substances. To date the CE marking has (rightly, in the UK's opinion) focused on situations where there is a risk that dangerous substances may be released into the air, soil or water, rather than trying to address products which may contain dangerous substances, but which are never likely to be a danger to anyone.

The amendment means that manufacturers whose products require classification under the EU Regulation on registration, authorisation and restriction of chemical substances (REACH - EC/1907/2006) will have to include this information with their CE marking. The European Parliament wanted this requirement to go much further, but the Council argued hard to restrict this requirement to those manufacturers who already had obligations under REACH. In my view, therefore, this is a proportionate outcome.

The remaining changes are much more minor, and many are very positive: there is greater freedom for manufacturers to choose whether or not to provide information by electronic means or in paper form, stronger requirements for independence and transparency in some of the bodies involved in the CE marking process,

and a stronger emphasis on addressing the whole life cycle performance of buildings and products. I do not consider that these changes have a material affect on the costs of the new Regulation for UK businesses**.**

Next steps

The text has now been passed to the Council and the Commission. We expect the Commission to deliver its opinion and the Council to then adopt the text within the next three months, meaning that the new Regulation would be published in the Official Journal of the EU this spring. Some of the enabling provisions will come into force 20 days after publication but the main provisions will not come into force in the UK until mid 2013.

I hope this update is useful for the Committee.

9 February 2011

Letter from the Chair to Andrew Stunell

Thank you for your letter of 9 February.

We are grateful to you for informing the Committee of the content of the proposed Second Reading deal between the European Parliament and the Council on a draft Regulation establishing harmonised rules for the marketing of construction products which, as your letter notes, cleared scrutiny last September.

2 March 2011