Correspondence with Ministers
October 2006 to April 2007

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As part of our scrutiny of the European Union and of documents deposited, our Sub-Committees prepare letters to Ministers to express views on documents under scrutiny and on other matters of policy. The procedure of sending a letter may be adopted for a number of reasons, including that the timetable of the Council of Ministers precludes the Committee making a report, or that the points at issue do not warrant a full report, or to follow-up a previous report.

We publish volumes of such correspondence, including Ministerial replies and other material where appropriate. This volume covers the period from October 2006 to April 2007 and includes the text of letters sent and received together with any supporting material. This volume includes not only an index of contents but also a list of documents by Council document numbers, where one is given.

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1 The previous volume of *Correspondence with Ministers* was published as the 40th Report, Session 2006–2007 (HL Paper 187).

2 All letters are signed and sent by the Chairman of the Select Committee, regardless of which Sub-Committee has prepared them.
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European Union Select Committee

BERLIN DECLARATION: 50TH ANNIVERSARY OF THE TREATIES OF ROME

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

During my evidence session with the Committee on 19 December 2006, we discussed the political Declaration which will be issued in Berlin on 25 March 2007 to mark the 50th anniversary of the signing of the Treaties of Rome. I would like to take this opportunity to set out the German Presidency’s plans for producing the Declaration and what we hope to see in the text.

The German Presidency has asked each Member State to nominate a “focal point” and accompanying aide to liaise with the Presidency in their consultations in preparation for the Political Declaration. The UK focal points are Mr Kim Darroch, Head of the Cabinet Office European Secretariat, and Ms Shan Morgan, European Union Director in the Foreign & Commonwealth Office. Ms Morgan has replaced Dr Nicola Brewer Europe Director-General in the Foreign & Commonwealth Office, who is moving on).

Bilateral meetings between focal points and the German Presidency have been taking place since 23 January and are due to finish on 2 February. We understand that the Presidency may follow up with a meeting of all focal points in Berlin sometime between 12 and 16 February. We also understand the Presidency plan to brief Heads of State and Government about the Declaration at the Spring European Council dinner on 8 March, and subsequently intend to issue a draft text and finalise it for adoption in Berlin on 25 March.

We believe the Berlin Declaration should be a short and accessible document. It should not only celebrate 50 years of achievements and the shared values of EU members but also look forward to the key challenges facing the European Union and its citizens in a globalised world. As I stated before the Lords Select Committee on 19 December, we will be happy to consider any contributions from Parliament regarding the content of the Declaration.

1 February 2007

Letter from the Chairman to Rt Hon Geoff Hoon MP

Thank you very much for your letter of 1 February 2007 regarding the preparation of the political Berlin Declaration marking the 50th anniversary of the Treaties of Rome. I have circulated the letter to the Members of the Select Committee and we discussed it at our meeting of 20 February. The Committee welcomes the fact that this celebration is taking place in Berlin.

We welcome the choice of UK focal points to liaise with the Presidency in the ongoing consultations on the Declaration and we are grateful for the timetable. We share Government’s view that the Declaration should be a short and accessible document. We appreciate that the preparation of the text is essentially an intergovernmental exercise, taking into account the contributions forwarded by the Presidents of the Commission and European Parliament. Your offer made to the Select Committee on 19 December 2006 to consider any contributions from Parliament regarding the content of the declaration—an offer repeated in your letter of 1 February—was much appreciated.

The Committee has taken the view that we would prefer not to comment until we have seen the text. We are assuming that it will indeed be a political declaration without legal force, and we would be particularly interested in your views on that question. We would wish to reserve the right to insist that any commitments binding upon the Member States would need to be subject to scrutiny by this Parliament. We will also at that stage wish to know what steps are being taken to inform citizens of the Declaration and what implications, if any, it may have for national parliaments.
The Committee would be grateful if, as a matter of urgency, you would confirm our impression that the consultations and negotiations appear to be leading towards the inclusion in the text of matters bearing on institutional changes which might risk prejudging some of the outcomes of the June European Council. In that event, we would seek clarification from you on the relationship between the Declaration and the ongoing Presidency consultations on the Constitutional Treaty, and on the Government’s position.

1 March 2007

Letter from the Rt Hon Geoff Hoon MP to the Chairman

Please find enclosed a Written Ministerial Statement that I made on 12 March about events to mark the 50th Anniversary of signing of the Treaties of Rome.

As this statement sets out, EU Heads of State and Government will mark the Anniversary at an informal meeting in Berlin on 25 March, and there will be an accompanying political declaration. There will also be a range of events taking place across the UK. In addition, the Foreign and Commonwealth Office and the British Council, supported by the Department for Education and Skills, are launching “Learning Together”—a new initiative to encourage partnerships between schools in the UK and Europe.

15 March 2007

Annex A

Written Statement

On 25 March, the European Union celebrates the 50th Anniversary of the signing of the Treaties of Rome. This is an important opportunity to mark the achievements of the EU. It is also a key moment to look ahead to the new challenges and opportunities of the global age, and how the EU can deliver for its citizens in the next 50 years. On major cross-border challenges such as terrorism, climate change, energy security, economic competition, migration or organised crime, the EU plays a vital role. These are the issues that the government put to the top of the EU’s agenda during our Presidency in 2005 and on which we are working successfully with partners to drive forward results. In this 50th Anniversary year, the Government will therefore continue to support a range of activities to raise awareness and engage the public in debate on key challenges and the EU’s role in helping to address them.

As part of our celebrations to mark this significant anniversary, FCO, DfES and the British Council will launch later this month a major year-long initiative called “Learning Together” to promote partnerships between UK schools and schools in other EU countries. Information will be made available to all schools across the UK about the range of opportunities available for schools to develop learning partnerships with European counterparts, including through EU programmes such as Comenius and e-Twinning. The initiative will ensure that relevant information and materials are made easily available to teachers. It will assist teachers and heads already in school partnerships to share their experience with other schools. This will help schools that have not previously taken part in international activities to get involved.

International partnerships and exchanges offer young people exciting opportunities, and can introduce international elements into a wide range of relevant curriculum subjects. “Learning Together” will also contribute to the government’s goal, outlined in the 2004 DfES International Strategy “Putting the World into World-Class Education”, of enabling every English school and college to establish a sustainable partnership with an international partner.

A wide range of other events will be taking place in the UK for the 50th Anniversary. For example, the Union of European Football Associations (UEFA), Manchester United and the European Commission have organised a charity friendly football match between Manchester United and a Europe XI team. The “50 years in Europe and 50 years of Europe” match on 13 March will celebrate both the 50th Anniversary of the EU and the 50th anniversary of Manchester United’s participation as the first English team to play in UEFA’s European club competition. The University Association for Contemporary European Studies will host a conference at the Foreign and Commonwealth Office, entitled “Reflections on European Integration—50 Years of the Treaty of Rome” on 23–24 March. And the European Movement in association with the Federal Trust and Chatham House will host a conference “Europe, the next 50 years” on 22 March.

At EU level, Heads of State and Government will mark the Anniversary at an informal meeting in Berlin on 25 March, and there will be an accompanying political declaration. Other EU-level events over the Anniversary weekend include a programme of cultural festivities in Berlin being organised by the German Presidency, cultural events and a symposium in Brussels, and a Youth Summit in Rome.
Letter from Rt Hon Geoff Hoon MP to the Chairman

Thank you for your letter of 1 March 2007 regarding the 50th Anniversary Declaration and your comments on my letter to you of 1 February. I attach a copy of the 50th Anniversary Declaration, which was issued on Sunday at the informal meeting of Heads of State and Government in Berlin. A copy has also been deposited in the House of Commons Library.

The Declaration was drafted by the German Presidency although they consulted Member States, in the course of that process, on elements they wished to see included. I am sorry that it was not possible to send you a text in advance of the informal. You are right that the Declaration is not legally binding and, as such, will not be subject to the scrutiny procedure applied to such instruments.

You expressed concern that discussions on the Declaration might be “leading towards an inclusion in the text of matters bearing on institutional changes which might risk prejudging some of the outcomes of the June European Council”. This weekend’s meeting in Berlin was informal and did not take decisions on this matter. We are clear that any decisions on the future of the Constitutional Treaty or institutional reform will be for the June 2007 European Council, as per the June 2006 European Council Conclusions.

27 March 2007

Declaration on the Occasion of the Fiftieth Anniversary of the Signature of the Treaties of Rome

For centuries Europe has been an idea, holding out hope of peace and understanding. That hope has been fulfilled. European unification has made peace and prosperity possible. It has brought about a sense of community and overcome differences. Each Member State has helped to unite Europe and to strengthen democracy and the rule of law. Thanks to the yearning for freedom of the people of Central and Eastern Europe the unnatural division of Europe is now consigned to the past. European integration shows that we have learnt the painful lessons of a history marked by bloody conflict. Today we live together as was never possible before.

We, the citizens of the European Union, have united for the better.

I.

In the European Union, we are turning our common ideals into reality: for us, the individual is paramount. His dignity is inviolable. His rights are inalienable. Women and men enjoy equal rights.

We are striving for peace and freedom, for democracy and the rule of law, for mutual respect and shared responsibility, for prosperity and security, for tolerance and participation, for justice and solidarity.

We have a unique way of living and working together in the European Union. This is expressed through the democratic interaction of the Member States and the European institutions. The European Union is founded on equal rights and mutually supportive cooperation. This enable us to strike a fair balance between Member States’ interests.

We preserve in the European Union the identities and diverse traditions of its Member States. We are enriched by open borders and a lively variety of languages, cultures and regions. There are many goals which we cannot achieve on our own, but only in concert. Tasks are shared between the European Union, the Member States and their regions and local authorities.

II.

We are facing major challenges which do not stop at national borders. The European Union is our response to these challenges. Only together can we continue to preserve our ideal of European society in future for the good of all European Union citizens. This European model combines economic success and social responsibility. The common market and the euro make us strong. We can thus shape the increasing interdependence of the global economy and ever-growing competition on international markets according to our values. Europe’s wealth lies in the knowledge and ability of its people; that is the key to growth, employment and social cohesion.

We will fight terrorism, organised crime and illegal immigration together. We stand up for liberties and civil rights also in the struggle against those who oppose them. Racism and xenophobia must never again be given any rein.
We are committed to the peaceful resolution of conflicts in the world and to ensuring that people do not become victims of war, terrorism and violence. The European Union wants to promote freedom and development in the world. We want to drive back poverty, hunger and disease. We want to continue to take a leading role in that fight.

We intend jointly to lead the way in energy policy and climate protection and make our contribution to averting the global threat of climate change.

III.

The European Union will continue to thrive both on openness and on the will of its Member States to consolidate the Union’s internal development. The European Union will continue to promote democracy, stability and prosperity beyond its borders.

With European unification a dream of earlier generations has become a reality. Our history reminds us that we must protect this for the good of future generations. For that reason we must always renew the political shape of Europe in keeping with the times. That is why today, 50 years after the signing of the Treaties of Rome, we are united in our aim of placing the European Union on a renewed common basis before the European Parliament elections in 2009.

For we know, Europe is our common future.
Economic and Financial Affairs, and
International Trade (Sub-Committee A)

ASSISTANCE FOR KOSOVO (9626/06)

Letter from the Chairman to Ed Balls MP, Economic Secretary, HM Treasury
Thank you very much for your Explanatory Memorandum 9626/06. This was considered by Sub-Committee A at their meeting on 24 October. As you will be aware, the EU Select Committee has made clear on a number of occasions that it exercises the highest level of scrutiny on Proposals involving Article 308 as their legal basis, and the Sub-Committee have decided to hold the document under scrutiny.

We were particularly interested that you will continue to seek assurance from the Commission that resources from other instruments are exhausted before recourse to the MFA is used. Could you confirm that this is the case for this Proposal, and that no other existing funding programmes or provisions under the Treaty would be suitable for providing this support to Kosovo?

We would also be grateful for your assessment of how urgent the provision of this money to Kosovo is.

24 October 2006

Letter from Ed Balls MP to the Chairman
Thank you for your letter of 24 October 2006 concerning your Committee’s consideration of the Explanatory Memorandum referenced above.

Your letter advised that you were unable to clear this EM from scrutiny and asked for clarification on certain issues.

Firstly you asked whether the Commission had given assurances that resources from other instruments are exhausted before the MFA is used. I can confirm that no other existing funding programmes or provisions under the Treaty would be suitable for providing this support to Kosovo.

The European Commission’s Economic and Financial Affairs Directorate-General has provided assurance that there is no other instrument that can provide budget support at the current time. The MFA instrument was designed for use in financial bridging, which in most cases would be balance of payment support but in this case is budget support. Kosovo’s reserves are the only source for financing the budget deficit. The IMF expects these to be depleted by the end of 2007. Kosovo cannot borrow from either the private sector (as it is not a legal entity) or from the IMF (as it is not classified a sovereign state and therefore cannot become a member).

Your letter also asked for an assessment of how urgent the provision of this money to Kosovo is. Our judgement is that the provision of funding is very urgent for the following reasons:

Kosovo only has access to internal resources and these are not sufficient. Also, it is expected that Kosovo will inherit a large chunk of Serbia’s debt upon gaining independence. The UN proposal regarding the status of Kosovo will be presented to the parties after the Serbian parliamentary elections at the end of January 2007. Moreover, the World Bank has made a gloomy forecast for the energy sector, predicting that Kosovo will need to import electricity this winter, thereby further damaging their budget.

The estimated budget deficit for 2006 is around nine million euros, or 0.4% of GDP. This level has been reduced substantially from a deficit of 6% of GDP in 2004, through the tightening of fiscal policy in view of the promised financial support from the EU. However, this level does not include interest payments or payments of the principal and interest on the share of Serbia’s debt to be inherited once a decision on Kosovo’s status has been finalised. With all such expenditure taken into account, the level of the deficit for 2007 is expected to be between 60–90 million euros.

Given the urgency there is pressure for Council to adopt a Decision in the next two weeks and we are therefore keen that your concerns are addressed as soon as possible.

I would like to stress that the UK will continue to monitor closely the disbursements of grants under exceptional Community financial assistance.

15 November 2006
BULGARIAN STEEL INDUSTRY (16563/06)

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

I regret to inform the Committee of a scrutiny override on 19 December 2006 on EM16563/06, submitted to your Committee on 9 January. I apologise for the delay in submitting this letter, due to the Christmas and New Year interval.

The Decision is intended to allow implementation of a revised restructuring plan for the Bulgarian steel industry so that it achieves viability under normal market conditions, in line with the provisions of the Europe Agreement with the Bulgarian Government, by the end of 2008. This supports the Government’s policy objectives in relation to the steel sector in Central Europe.

The revised restructuring plan, and request by the Bulgarian Government for an extension of the time allowed to implement it, follows a Commission assessment that Kremikovti AD, the only company to have benefited from state aid, would not reach viability by the end of 2006, as required under the previous plan.

EM 16563/06 sets out the background and scrutiny history and notes that your Committee was supportive of the previous 2004 Council decision and did not comment on the proposal at that time.

The background to agreeing to adoption of the Decision in advance of scrutiny clearance was that the document was only presented by the Commission on 11 December 2006, just before the last meeting of the Select Committee on the European Union, at the same time as it was made clear to us that the proposal was coming to full agreement before Christmas. In view of the recess and the urgency of getting the Decision adopted as an amendment to the Europe Agreement before Bulgaria’s EU accession on 1 January, when the EC Treaty provisions on State aid apply, not those in the association agreement, the Government felt that it should not withhold agreement. I hope that the Committee will agree it was important that we supported this proposal.

11 January 2007

COHESION POLICY IN SUPPORT OF GROWTH AND JOBS: COMMUNITY STRATEGIC GUIDELINES, 2007–13 (11706/06)

Letter from the Chairman to Lord Sainsbury of Turville, Parliamentary Under Secretary of State for Science and Innovation, Department of Trade and Industry

Thank you very much for your Explanatory Memorandum 11706/06. This was considered by Sub-Committee A at their meeting on 17 October. Given that agreement has already been reached on the Guidelines the Committee has lifted the scrutiny reserve.

As you are aware, the Committee is very keen to avoid scrutiny overrides where possible. In this situation we do understand that negotiations progressed over the summer recess when the Committee did not sit. We also acknowledge that agreement was necessary to ensure that the start of the programmes themselves was not delayed. In this regard we were grateful to receive letters from DTI Ministers on 10 August and 18 September updating us.

Nonetheless, we would be interested to hear more on how the text was amended so that the Guidelines now constitute an indicative framework of priorities from which Member States can choose, thus appeasing your reservations regarding the issue of subsidiarity.

24 October 2006

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

On 18 September my colleague Jim Fitzpatrick wrote to you to explain that regretfully he expected to have to override the scrutiny reserve on 11706/06. I am writing to inform you that The Community Strategic Guidelines were adopted on 6 October.

The Guidelines are the last element in the set of Community legislation to govern the Structural Funds 2007–13. Work is now moving ahead on Programmes across the Community.

30 October 2006

1 Correspondence with Ministers, 40th Report of Session 2006–07, HL Paper 187, p 7
COMMUNITY LISBON PROGRAMME—COMMON CONSOLIDATED CORPORATE TAX BASE
(8231/06)

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

I am writing in response to your further letter of 5 July 2006 which was written in reply to mine of 16 June.

As you will recall from my letters to you and to Jimmy Hood of 16 June and my earlier letter to you of 12 January, the Commission is taking forward its technical work in its Common Consolidated Corporate Tax Base Working Group (CCCTB) without political commitments from Member States. The UK Government, as you are aware, does not see a need for the Commission’s technical work in this area and remains clear that fair tax competition, not tax harmonisation is the way forward for Europe.

The Government has no plans in the circumstances to consult business on the technical work on a CCCTB which is being conducted by the Commission.

The Committee might be interested to know however that the Commission has designed the CCCTB WG’s terms of reference and rules of procedure to provide a voice for business and other experts. Specifically, the terms of reference say: “The Commission may decide to hold meetings in an extended formation of the WG by inviting experts from business federations and associations and academic institutions to contribute to the work of the WG.” Experts from business and others were represented at a one-day extended meeting of the CCCTB WG on 7 December 2005 and at a half-day session on 2 June.

The Commission’s website on its work on a CCCTB also explains that the Commission is keen to ensure contribution by experts from business and from academics. An email address is provided for those wishing to comment or contribute in response to the CCCTB Working Group’s documents.

On the issue of whether a common base should be optional or compulsory for companies, there appears to be a range of views, just as there are on other issues relating to this work including the common tax base concept as a whole. From discussions with others, however, it is fair to say that Member States’ national tax authorities and the Commission are generally well aware that there might be potential issues and difficulties for a Member State participating in a CCCTB which was optional for companies. You may recall that in COM (2006) 157 the Commission acknowledges that “care will be needed to ensure that State Aid rules are not infringed and that appropriate anti-abuse rules are introduced.”

The Government will of course continue to keep the Committee informed about future developments on the Commission’s technical work in this area, including any relating to the issue of national tax incentives.

I hope you find this information helpful.

17 October 2006

Letter from the Chairman to Rt Hon Dawn Primarolo MP

Thank you very much for your letter dated 17 October on EM 8231/06. This was considered by Sub-Committee A at their meeting on 31 October when it was decided to hold the document under scrutiny.

The Committee was interested to hear of the Terms of Reference of the Common Consolidated Corporate Tax Base Working Group. The Committee of course recognises the Government’s view that “fair tax competition, not tax harmonisation, is no way forward for Europe”, and supports this view in respect of tax rates. However, the Committee notes that some in business believe that a degree of harmonisation of structures could improve both efficiency and transparency, and so make competition fairer. Could you please confirm what role the Government are playing in the Working Group to influence the debate on this subject? Could you also confirm what the likely timetable is for the rest of the Working Group’s activities?

We would also like to be kept informed of any other developments in this area.

31 October 2006

Letter from Rt Hon Dawn Primarolo MP to the Chairman

I am writing in response to your further follow-up letter of 31 October.

As far as UK participation in the Commission’s Working Group is concerned, including the role played to influence the debate on this subject, I would like to draw your attention to the second page and the first part

2 Correspondence with Ministers, 40th Report of Session 2006–07, HL Paper 187, p 10
3 Correspondence with Ministers, 40th Report of Session 2006–07, HL Paper 187, p 12–13
of the third of my letters of 16 June 2006 to Mr Jimmy Hood which set out in some detail the basis of UK engagement in the Working Group. For instance, you will see that the letter explains why the Government believes that it is only right and proper that UK officials should be present in discussions such as these in the EU and that this provides the UK “with a further opportunity to engage with other Member States and highlight the need for a change in approach”. The UK has, of course, participated fully in high level group discussions on a CCCTB organised by a presidency, and will continue to do so.

As regards the likely timetable for the rest of the activities of the Commission’s Working Group, I would like to draw your attention to paragraph 8 of EM 8231/06 and Annex 1 of the Commission’s Communication COM(2006) 157. The Commission’s website on its technical work on a CCCTB includes information on the Commission Working Group’s quarterly meetings including the two most recent meetings which were held in June and September 2006.

The Government will of course continue to keep both the Lords and the Commons Committees informed about developments in this area. You may be interested to know that the European Commission is expected to give an oral report on its progress on its technical work in this area to the forthcoming meeting of the ECOFIN Council on 28 November.

I hope you find this information helpful.

17 November 2006

COMMUNITY STATISTICS ON THE STRUCTURE AND ACTIVITY OF FOREIGN AFFILIATES (7578/05)

Letter from John Healey MP, Financial Secretary, HM Treasury to the Chairman

I am writing to update you on the position of the above proposal of the European Parliament (EP) and of the Council on Community Statistics on the structure and activity of foreign affiliates, with regard to the EP first reading amendments.

Along with mainly textual clarifications to the regulatory proposal, the EP first reading amendments concern which implementing measures are to be taken under the regulatory procedure and which under the regulatory procedure with scrutiny. Agreement with the EP has not yet been reached on the application of the regulatory procedure with scrutiny to matters concerning quality. On all other aspects agreement has been reached.

Quality criteria and standards are defined in a detailed way in the Quality Framework for European Statistics and concern matters of a professional and scientific nature. The European Statistics Code of Practice; promulgated in the Commission Recommendation of 25 May 2005 on the independence, integrity and accountability of the national and Community statistical authorities and endorsed by EU Economic and Finance Ministers in November 2005, calls for professional independence; including that statistical authorities should have sole responsibility for deciding on statistical methods, standards and procedures. It is over this issue that divergence of opinion between the Council Working Group on Statistics and the EP has arisen as to the application of the regulatory procedure with scrutiny for quality matters. This issue affects other legislative proposals concerning statistics currently progressing under co-decision.

The medium term aim of the current Presidency is to establish a standardised approach to the treatment of quality matters in legislative proposals concerning statistics (eg a standardised article) and, longer-term, for the integration of general quality standards and precise definitions of terms used in quality discussions into a revised Regulation on Community Statistics. This approach would remove ambiguity and is supported by the UK. In the short-term the Presidency will continue negotiation with the Parliament to determine scope for re-drafting of the articles in the FATS regulation. The UK supports the Presidency’s current efforts. In this context I note that the EP voted in plenary on the regulation COM(2006) 11 on integrated social protection statistics, approving text that measures relating to the “criteria for measurement of quality” should be taken through the “normal” regulatory procedure, highlighting the importance of ensuring a consistent approach to the treatment of quality measures in statistical regulations.

I will keep you updated on progress.

8 February 2007
COORDINATION OF MEMBER STATES’ TAX SYSTEMS (17066/06, 17067/06, 17068/06)

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

Thank you for your Explanatory Memoranda dated 16 January. Sub-Committee A considered these on 20 February and cleared the documents from scrutiny. I would be grateful if you could write with details of the discussions on this subject after these occur in ECOFIN next month. The Sub-Committee would also appreciate advanced notice should it appear likely that the Commission will begin to develop legislative proposals for specific initiatives in this area.

21 February 2007

Letter from Rt Hon Dawn Primarolo MP to the Chairman

I am writing in response to your request in your letter of 21 February for details on developments relating to the above-mentioned Communications at the ECOFIN Council meeting on 27 March.

The ECOFIN Council adopted the conclusions which are set out in the Council press notice (attached at Annex) on “Co-ordinating Member States’ direct tax systems in the Internal Market”.

As you will see, these Conclusions highlight amongst other things that Member States are free to design their direct tax systems to meet their domestic policy objectives and requirements, provided they exercise their competence in a way which is consistent with Community law. The conclusions also emphasise, for instance, that “while respecting national competences”, there is a role for cooperation on taxation among Member States and where appropriate at European level and acknowledge the need for effective use of the administrative cooperation mechanisms.

Member States have been invited by the Council to continue work with the Commission “with a view to establishing in which areas there may be need for greater co-ordination”.

I hope you find this information helpful.

23 April 2007

Annex A

COUNCIL CONCLUSIONS ON CO-ORDINATING MEMBER STATES’ DIRECT TAX SYSTEMS IN THE INTERNAL MARKET

2792nd ECONOMIC AND FINANCIAL AFFAIRS COUNCIL MEETING: BRUSSELS, 27 MARCH 2007

The Council adopted the following conclusions:

“The Council held a debate based on the Communications from the Commission on ‘Co-ordinating Member States’ direct tax systems in the Internal Market’, ‘Exit taxation and the need for co-ordination of Member States’ tax policies’, and ‘Tax Treatment of Losses in Cross-Border Situations’.”

The Council and the Commission recalled that Member States are free to design their direct tax systems so as to meet their domestic policy objectives and requirements, provided that they exercise that competence consistently with Community law.

The Council underlined that the functioning of the internal market may be improved through co-operation on taxation among Member States and where appropriate at the European level, while respecting national competencies. While recognising the principle of preserving an effective allocation of the power to tax, the Council recognised the value of discussions on enhancing co-operation between Member States in specific areas of direct taxation to ensure that their domestic direct tax systems work together within the framework of Community law. The Council noted that appropriate solutions may take a variety of forms, in accordance with the subsidiarity principle.

The Council acknowledged the need for an effective use of the mechanisms of administrative co-operation such as those provided for in the Mutual Assistance and Recovery Directives.

Against this background the Council took note of the Commission proposals towards improved co-ordination of national tax systems. The Council invites the Member States to continue to work with the Commission with a view to establishing in which areas there may be a need for greater co-ordination.
ECONOMIC AND FINANCIAL AFFAIRS, AND INTERNATIONAL TRADE (SUB-COMMITTEE A)

DUTY ON IMPORTS OF CERTAIN FOOTWEAR WITH LEATHER UPPERS (12512/06)

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

Thank you for your Explanatory Memorandum 12512/06 dated 20 February which was considered by Sub-Committee A on 13 March 2007. As you will be aware, the provisions referred to in this document came into force on 7 October 2006 and were subject to an override of the scrutiny reserve. The Sub-Committee expressed their regret at this and was pleased to hear that you have put into practice departmental improvements to ensure that these delays do not occur again.

The Sub-Committee would be grateful if you could provide an update on this particular case. They noted that the UK almost succeeded in building up a majority against the proposal and that the Commission agreed to shorten the duration of the duties from five years to two years. We are now one quarter of the way through this two year period and the Sub Committee would be interested in hearing of the Government’s assessment of the impact of these duties on British manufacturers—both those who have outsourced production to China and those still producing in the UK—and on the prices of footwear with uppers of leather in UK shops.

13 March 2007

Letter from Rt Hon Ian McCartney MP to the Chairman

Thank you for your letter of 13 March seeking further information about the effects of the imposition of ad valorem anti-dumping duties on imports of footwear with uppers of leather originating in China and Vietnam.

It is not possible to precisely isolate the influence of anti-dumping measures on leather footwear prices, because of the range of factors affecting prices at any one time. However, assuming the full effects of the measures were passed on to consumers, they could lead to one-off increases in prices of the footwear covered by the measures of between 1.5% and 4.5%. The changing pattern of trade over the latter part of 2006 suggests that retailers and importers are making efforts to avoid this by sourcing from other countries. This is borne out by EUROSTAT figures.

You asked about the impact of the anti-dumping duties on British manufacturers. There are a few producers of footwear with uppers of leather in the UK. These manufacturers wrote to me in early 2006 urging me to support the European Commission proposal to impose anti-dumping duties. I have not heard from them since. The large manufacturers such as Clarks, who outsourced their production to various countries in Asia, are opposed to the duties. Since the imposition of the duties, there has been a trend to source from other countries in Asia, apart from China and Vietnam. EUROSTAT statistics indicate that imports into the European Community from Malaysia and Cambodia in particular rose by 660% and 240% respectively in the period of July to November 2006 over the same period in 2005. Imports from Macao increased even more rapidly by 1,700% in the period April to November 2006 over the same period in 2005. The European Commission is considering taking anti-circumvention action against Macao, subject to gathering evidence that Chinese footwear is being imported into the EU with a false declaration of origin.

On the other hand, imports from China and Vietnam have dropped by 40% and 52% respectively since the imposition of the definitive duties. This is based on a comparison of imports for October and November 2006 with imports for the same two months in 2005. This is in line with the prediction made by UK retailers before the duties were imposed, when it was argued that the duties would not assist EU producers but would cause companies to source from other third countries.

23 April 2007

EC BUDGET 2006

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

Preliminary Draft Amending Budget No 6 to the 2006 EC Budget (PDAB 06/2006), together with its Amending Letter will reduce the level of funding required from Member States in 2006 by €7,374 million (£5,053 million). This reduces the UK’s gross contribution to the 2006 EC Budget, after taking account of the abatement, by €1,248 million (£855 million).
I am submitting this letter alongside the Explanatory Memorandum (EM) on the Amending Budget, which provides further detail and explanation of the budget sources that have not been used.

Regrettably it has not been possible to take account of the Committees’ views in advance of the Council vote on the PDAB 06/2006 and its Amending Letter. The proposal was produced only on 30 October 2006 and the Council vote was taken on 30 November 2006, before the documents were deposited with Parliament. The proposal was put forward quickly because the Finnish Presidency wished to reduce the level of Member State funding as soon as possible, as a prompt return would be to the benefit of all Member States. Using the current Bank of England repo rate the interest payable on the UK share is £111,000 per day, so repayment in January rather than February would save the UK taxpayer up to £3.3 million.

I regret that this was necessary but given that the return of unused funds is routine and in the UK’s interest, I hope that the Committees will understand my reasons for supporting the PDAB 06/2006. The Committee clerks have been alerted to this issue.

6 December 2006

EC BUDGET 2007

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

The European Parliament (EP) recently held its first reading of the 2005 Draft EC Budget, culminating in a plenary vote on amendments on 26 October. I am writing to update you on the main changes to the Draft Budget established by Council on 25 July.

Additionally, the Commission has presented two Amending Letters to its Preliminary Draft Budget (PDB) since Council’s first reading which will be discussed and adopted during the course of the 2006 budget procedure—this letter explains the contents.

THE EUROPEAN PARLIAMENT’S AMENDMENTS

Overall, the EP increased commitments by €1.54 billion to a total of €127.335 billion and payments by €7.36 billion to €122.02 billion. The payment figures correspond to 1.04% GNI compared to the ceiling of 1.24% of GNI set by the Community’s Own Resources Decision. The total margin left under the Financial Perspective ceiling for commitments following the EP’s amendments is €1.07 billion.

In Heading 1a (Competitiveness for Growth and Employment), the EP increased Commitments by €550.2 million, and payments by €2.773 billion, compared to the Draft Budget. This largely reverses the Council’s reductions to the increases proposed by the PDB, and in the case of both payments and commitments, this actually represents an increase compared to the PDB. These proposed increases to the Draft Budget were to be spent on a range of priorities including:

— the Competitive and Innovation Programme;
— the 7th Framework Programme for Research;
— a pilot project on co-operation between European Institutes of Technology;
— the Lifelong Learning programme;
— the European Centre for the Development of Vocational Training;
— The European Social Fund;
— European Employment Services EURES;
— The social programme “Progress”; and
— Information and training measures for workers’ organisations.

This brings the total commitment appropriations for Heading 1a to €8.837 billion, leaving a margin of €81.2 billion, and total payment appropriations to €9.541 billion.

In Heading 1b (Cohesion for Growth and Management), the EP increased commitment appropriations by €0.023 million and payment appropriations by €2.534 billion, compared to the Draft Budget. This largely reverses the Council’s reductions to the increases proposed by the PDB. The EP also decided to increase payment appropriations for the budget lines linked to the ERDF in line with its political priorities. This brings the total commitments for Heading 1B to €45.487 billion, leaving a margin of €0.2 million, and total payments to €39.899 billion.
In **Heading 2 (Preservation and Management of Natural Resources)**, the EP increased commitment appropriations by €113.5 million and payment appropriations by €1,259 billion, compared to the Draft Budget. The EP restored the PDB proposals for all the lines on which the Council proposed a reduction. The EP also voted amendments for increases beyond the PDB for:

- distribution of fruit and vegetables;
- help to less favoured people;
- advertising measures; and
- Animal welfare;
- Life +; and
- a new pilot project was established on forest protection and conservation.

The EP also proposed to place 20% of planned commitments dedicated to voluntary modulation in reserve as it has concerns as to whether the relevant distinctions between compulsory and non-compulsory expenditure are being respected.

These amendments brings the total commitments for Heading 2 to €57,606 billion, leaving a margin of €744.9 million, and total payments to €56,155 billion.

In **Heading 3a (Freedom, Security and Justice)**, the EP increased commitment appropriations by €58 million and payment appropriations by €77 million compared to the Draft Budget. The EP restored all the main programmes where the Council had made its cuts. For the Frontex Agency the appropriations were substantially increased beyond PDB (€12.8 million in commitment appropriations and payment appropriations total of €34 million), with these appropriations going into the reserve. Increases to the PDB were also adopted for the External Borders Fund and for “integration of third country nationals.” Pilot and preparatory schemes were proposed for the “Solidarity in action” (migration management) for €15 million, and for setting an anti-terror data base, for which €5 million in commitments was proposed.

These amendments brings the total commitments for Heading 3a to €619 million, leaving a margin of €17.8 million, and total payments to €477 million.

In **Heading 3b (Citizenship)**, the EP increased commitment appropriations by €28 million and payment appropriations by €60 million compared to the Draft Budget. The EP voted this increase to provide funding for a range of priorities within the “Education and Culture” policy area, namely for the programmes Citizens for Europe and Youth in Action, as well as Multimedia Actions, Special Annual Events and the European Year of Intercultural Dialogue. The EP also adopted proposals for three pilot projects on “Pilot Information Networks”, which aims at increasing the networking of information between opinion formers in the EU, and on European political foundations. Moreover, the plan D for Democracy, Dialogue and Debate was increased by restoring the PDB and including new initiatives.

The amendments bring the total of commitments for Heading 3b to €615 million, leaving a margin of €20.2 million, and total payments to €708 million.

In **Heading 4 (The EU as a Global Partner)**, the EP increased commitment appropriations by €175.994 million and payment appropriations by €572.892 million compared to the Draft Budget. The increase voted by the EP was justified by the need to maintain a geographic and thematic balance between priorities. The EP voted to set commitment appropriations for Afghanistan at €100 million and Afghanistan was split out from spending on other countries in Asia and given a separate line. The EP also voted to reduce the expenditure on the Common Foreign and Security Policy (CFSP) by €86.6 million. A number of pilot projects and preparatory actions were voted, including two for business and scientific exchanges with China and India.

The amendments bring the total of commitments for Heading 4 to €6.769 billion, leaving a margin of €44 million, and total payments to €7.834 billion.

In **Heading 5 (Administration)**, the EP increased commitment and payment appropriations by €83 million. The EP decided not to endorse the Council’s strategy to reprioritise half the posts due to become vacant in the course of 2008 and voted to restore the establishment plan of the Commission as per the PDB. The EP also decided to place €50 million in reserve.

The amendments bring the total of commitments and payments for Heading 5 to €6.956 billion, leaving a margin of €159 million.

The EP made no amendments to **Heading 6 (Compensation)** and appropriations remained at €445 million for both commitment and payment appropriations.
UK PRIORITIES AND NEXT STEPS

The EP’s amendments will be discussed in the Council’s budget committee (where negotiations began on 8 November) and subsequently by Ambassadors in Coreper. A Conciliation meeting between the Council and European Parliament will take place on 21 November during the Budget ECOFIN, at which both sides will attempt to reach consensus on key elements of the budget. Council will then complete its second reading of the 2007 Budget, when compulsory expenditure (mainly agriculture) will be definitively settled. The budget will then pass back to the EP for its second reading on 14 December, at which non-compulsory expenditure will be settled and the 2007 Budget finally adopted.

The Government’s priority in the forthcoming Council discussions will be to reach agreement with the EP in as many areas as possible in a way which does not compromise sound financial management by:

— reducing overall allocations to deliver a more realistically sized budget, with suitable margins for dealing with contingencies;
— reducing the agriculture and structural funds budget to a more acceptable level in line with implementation capacity; and
— avoiding the use of the flexibility instrument.

We will also be working to finalise agreement on appropriations dedicated to the reconstruction of Iraq, restore some of the CFSP allocation made during the Council’s first reading and trying to ensure that allocations for assistance to Asia (Afghanistan) and Transitional Sugar Assistance do not drop below the amounts agreed in the Draft Budget.


AMENDING LETTER 2

Amending Letter 2 (AL 2/2007) affects: the European Globalisation Adjustment Fund (EGF); the International Fund for Ireland 2007-2010; Hercule (Protection of the Community’s Financial Interests); the Structural and Cohesion Funds and the European Fisheries Fund; the Joint Research Centre (JRC); Budgetary adjustments following modernisation of the accounting system; coverage of expenditure incurred in connection with treasury management; the creation of a new budget item concerning European Development Fund contribution to common administrative support expenditure; the European Investment Fund; Platform of the European Social Non-Governmental Organisations; and Participation by the Swiss Confederation in Community Programmes.

The suggested changes with net financial impacts are as follows:

— Creation of European Globalisation Adjustment Fund must be taken into account following the approval of the Interinstitutions Agreement on 17 May 2006. AL 2/2007 suggest €500 million in commitment appropriations be entered into reserve as a result.
— Pending adoption of the proposal for a new Council regulation on Community, financial contributions to the International Fund for Ireland (IFI), it is proposed that €15 million in commitment appropriations be entered into reserve.
— Following the adoption by the Commission on 28 June 2006 of the proposal for a Decision amending and extending Decision No 804/2004/EC on a Community action programme to promote activities in the field of the protection of the Community’s financial interest (Hercule II), it is proposed that commitment appropriations be increased by €6 million and €4.4 million payment appropriations be entered into the reserve programme.
— The contribution of Heading 1b to the European Neighbourhood and Partnership Instrument. This does not impact on the commitment appropriations but there is an increase in payment appropriations of €8.4 million.

The Government will be seeking further evidence that the amounts proposed are justified and that they correspond to likely implementation rates.
Amending Letter 3

Amending Letter 3 is to update the figures underlying the estimate of agricultural expenditure in the preliminary draft budget (PDB) and/or to correct, on the basis of the most recent information available concerning fisheries, the amounts and their breakdown between the appropriations entered in the operational items for international fisheries agreements and those entered in reserve. The suggested changes with net financial impacts are as follows:

— The euro-dollar rate used, in accordance with Council Regulation No 1290/2005 on the financing of the Common Agricultural Policy is based on the average rated observed between 1 July and 30 September 2006. It comes to €1 = $1.27 and results in an increase in needs of about €78 million compared to the PDB.

— The change for International Fisheries agreements relates to the entry into force of the Fisheries Partnership Agreement with Mauritania, but without modifying the overall amount for fisheries agreements. It is purposed to reduce the reserve line by an amount of €86 million and to increase the corresponding operational line by the same amount.

— The needs of agricultural expenditure amount to €42,832 million, a reduction of €852 million compared to the PDB.

The Government is satisfied with evidence provided and is likely to vote in favour of Amending Letter 3.

14 November 2006
The table below summarises the financial allocations set in the Preliminary Draft Budget (PDB), Council’s Draft Budget and at EP’s first reading of the budget. These show relative margins to the ceiling set for 2007 under the 2007–13 Financial Framework.

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CA = Commitment Appropriations; PA = Payment Appropriations.
Figures may not add up exactly because of rounding.
Conversion rate as of May 2006: £1 = €1.4405 and £1 = £0.6942.

Annex A
### Table 1

**2007 PDB, DRAFT EC BUDGET AND 2007 EP 1ST READING (STERLING)**

The table below summarises the financial allocations set in the Preliminary Draft Budget (PDB), Council’s Draft Budget and at EP’s first reading of the budget. These show relative margins to the ceiling set for 2007 under the 2007–13 Financial Framework.

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<td>88,041</td>
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**Appropriations for payments as % of GNI**

| CA | 0.99% |
| PA | 0.98% |

CA = Commitment Appropriations; PA = Payment Appropriations.

Figures may not add up exactly because of rounding.

Conversion rate as of May 2006: £1 = €1.4405 and €1 = £0.6942
**Letter from Ed Balls MP to the Chairman**

You will be aware that the ECOFIN Council adopted a second reading position on the 2007 Budget of the European Communities at the ECOFIN (Budget) Council on 21 November. This was followed by conciliation with the European Parliament (EP).

The Council agreed to a number of changes proposed by the Commission in Amending Letters 2 and 3<sup>4</sup> and broadly returned to the Draft Budget (DB) it had agreed in July across most headings. The exception was Heading 5 (Administration) as the Presidency withdrew a draft declaration on posts that had met strong opposition in Council from a blocking minority of Member States. A reduction to the 2007 Preliminary Draft Budget (PDB 2007) for Heading 2 (Agriculture) of just under €1 billion and an allocation of €100 million for Iraq were definitely secured. The allocation for Asia was increased by €30 million compared to the Council’s first reading, and payment levels for Structural Funds were set at a more reasonable levels. The EP will however have the final say in these areas in its Second Reading, on 14 and 15 December.

During conciliation the Council and the EP did agree the overall limit on payments in 2007 be set at €115.5 billion, just under 1% of EC GNI. This supersedes the total agreed in the Council’s Second Reading.

My Explanatory Memorandum, submitted on 23 May 2006, set out the Commission’s 2007 PDB proposals in detail. It was followed by two letters: on the 7 September 2006<sup>5</sup> I gave you details of the DB adopted by the Council on 14 July 2006; and on 14 November I wrote explaining the EP’s first reading amendments to the DB. The EP will examine the Council’s second reading on the DB and adopt the 2007 budget at its plenary session on 14–15 December 2006. The main changes between the Council’s second reading and the EP’s first are set out below:

*Overall*: Council’s second reading reduced commitments by €1,747 million to €125,587 million and payments by €7,687 million to €114,329. These figures and all the figures below include the accepted changes proposed by the Amending Letters 1–3.

*Competitiveness for growth and employment (Heading 1a)*: Council returned to the DB, cutting commitments by €55 million to €8,782 million and payments by €2,774 million to €6,767 million compared to the EP’s first reading.

*Cohesion for growth and employment (Heading 1b)*: Council returned to the DB, cutting commitments by €0.226 million to €45,487 million and payments by €2,525 million to €37,374 million.

*Preservation and management of natural resources (Heading 2)*: Council agreed to cut commitments by €1,367 million to €56,329 and payments by €1,491 million to €54,663 million compared to the EP’s first reading. This overall reduction is definite and cannot be amended by the Parliament in its second reading. The Council did accept some of the European Parliament’s amends that meant that compared to the DB commitments and payments were increased by €232.5 million. It was necessary for these amendments to be accepted for an agreement in Council to be reached and the much more significant overall reductions secured. A pilot project on Biofuels was also agreed as part of conciliation with EP.

*Freedom, Security and Justice (Heading 3a)*: All of the EP’s amends were rejected by the Council reducing commitments by €57.5 million to €562 million and payments by €76.9 million to €400 million compared to the EP’s first reading.

*Citizenship (Heading 3b)*: Council returned to the DB, with one exception. It accepted the EP’s amendment of Special Annual Events increasing the line by €1.5 million. Overall, this meant commitments were reduced by €27 million to €589 million and payments by €58.62 million to €650 million compared to the EP’s first reading.

*The EU as a Global Partner (Heading 4)*: Council reduced commitments by €133.1 million to €6,636 million and payments by €654.5 million to €7,180 million compared to the EP’s first reading. Noteworthy changes include a restoration of the CFSP line to DB levels (€159.2 million commitments and €120.4 million payments), an increase to the Asia line by €30 million, a return to €162 million commitments for Transitional Sugar Assistance as per the DB. The €100 million allocation to Iraq (commitments) agreed in the EP’s first reading remained unchanged.

<sup>4</sup> The detail of these Amending Letters was discussed in my letter dated 14 November 2006.

<sup>5</sup> Correspondence with Ministers, 40th Report of Session 2006–07, HL Paper 187, pp 21–25
Administration (Heading 5): The Council returned to the Draft Budget on most budget lines reducing commitments and payments by €106.8 million to €6,850 million. Because of the Gentleman’s agreement that exists between the European Parliament and the Council, the Council accepted the EP’s amends to its own administrative budget. The Council also agreed to erase its declaration on posts which proved unacceptable to a blocking minority of Member States.

Compensations (Heading 6): Commitment and payment allocations of €444.5 million remained unchanged.

A table summarising the changes between the EP’s first reading and Council’s second reading is attached in Annex A to this letter. It should be noted that the payments level agreed in the Council’s Second Reading is lower than the €115.5 billion agreed subsequently in conciliation with the EP. The difference in payments will be redistributed by the EP in its second reading.

Overall, the Government believes the Council’s second reading goes a long way to meeting its key objectives. In general, budget discipline and flexibility have been maintained. In particular, we have reached agreement to limit total payments and preserved the financial perspective ceilings. We have also secured funding for Iraq, for Asia, for the EU’s Common Foreign and Security Policy (CFSP), and for Transitional Sugar Assistance.

13 December 2006
### Annex A

#### Table 1


The table below summarises the financial allocations set in the Preliminary Draft Budget (PDB), Council’s Draft Budget and at EP’s first reading of the budget. These show relative margins to the ceiling set for 2007 under the 2007–13 Financial Framework.

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Appropriations for payments as % of GNI | 0.99% | 0.98% | 1.04% | 0.97%

CA = Commitment Appropriations; PA = Payment Appropriations.
Figures may not add up exactly because of rounding.
Conversion rate as of May 2006: £1 = €1.4405 and €1 = £0.69
## Table 2

### 2007 PDB, DRAFT EC BUDGET, 2007 EP 1ST READING (STERLING) AND 2007 COUNCIL SECOND READING (STERLING)

The table below summarises the financial allocations set in the Preliminary Draft Budget (PDB), Council’s Draft Budget and at EP’s first reading of the budget. These show relative margins to the ceiling set for 2007 under the 2007–13 Financial Framework.

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Appropriations for payments as % of GNI

| CA | 0.99% |
| PA | 0.98% |
| TOTAL | 1.04% |
| PA | 0.97% |

CA = Commitment Appropriations; PA = Payment Appropriations.

Figures may not add up exactly because of rounding.

Conversion rate as of May 2006: £1 = €1.4405 and €1 = £0.6942
Letter from Ed Balls MP to the Chairman

The European Parliament (EP) formally adopted the 2007 EC Budget on 14 December. The final outcome was in line with the agreement reached between the Council and EP during conciliation on 21 November. Overall, commitment appropriations were set at €126,551 million and payments appropriations were set at €115,497 million (0.99% EU GNI).

The attached tables (Annex A) provide a breakdown of expenditure by each heading in the 2007 Budget. Before detailing how far this final position goes towards meeting the Government’s objectives, allow me to highlight the main changes between the Council’s second reading and the adopted budget.

- **Competitiveness for growth and employment (Heading 1a):** This heading of the budget consists predominantly of non-compulsory expenditure over which the European Parliament has the final decision. Commitments were set at €8,868 million, €80 million higher than at Council second reading leaving a margin of €50 million. Payments were set at €7,072 million, €305 million higher than at Council second reading. The most significant increase to payments was made to the 7th Framework Programme, which focuses on encouraging a cohesive European approach to research and development, for which funds were increased from €3,879 million to €4,026 million.

- **Cohesion for growth and employment (Heading 1b):** This heading of the budget consists exclusively of non-compulsory expenditure over which the European Parliament has the final decision. Commitments were set at €45,487 million, €0.2 million higher than at Council’s second reading, leaving a margin of €0.2 million. Payments were set at €37,790 million, €425 million higher than during the Council’s second reading. The most significant increase to payments was made to the Structural Funds’ Regional competitiveness and employment objective, for which funds were increased from €8,972 million to €9,331.

- **Preservation of and management of natural resources (Heading 2):** This heading of the budget consists pre-dominantly of compulsory expenditure and is set by the Council. Commitments and payments are therefore largely unchanged from Council’s second reading, at €56,250 million and €54,719 million, respectively, leaving a margin of €2,101 million below the Financial Perspective (FP) ceiling.

- **Freedom, Security and Justice (Heading 3a):** This heading of the budget consists predominantly of non-compulsory expenditure over which the European Parliament has the final decision. The EP returned to a position similar to that it had adopted in its first reading. It set Commitments at €624 million, €62 million higher than at the Council’s second reading and leaving a margin of €13.2 million. Payments were set at €474 million, €74 million higher than in the Council’s first reading. The most significant increases for both commitments and payments were made to spending on programmes under the area of Freedom, Security and Justice instrument.

- **Citizenship (Heading 3b):** This heading of the budget consists predominantly of non-compulsory expenditure over which the European Parliament has the final decision. As in the case of Heading 3a, the European Parliament, returned to a position similar that adopted in its first reading. It set commitments at €623 million, €35 million higher than at the Council’s second reading and leaving a margin of €13.4 million. Payments were set at €703 million, €54 million higher than at the Council’s second reading. For both Commitments and Payments, the most significant increases were granted to Community Actions and to Citizenship programmes related to enlargement.

- **The EU as a Global Partner (Heading 4):** This heading of the budget consists of non-compulsory expenditure over which the European Parliament has the final decision. Commitments were increased by €176.7 million to €6,578 million leaving a margin of €0.067 million. Payments were increased by €173 million to €7,353 million. For both commitments and payments, the most significant increase were to the Development Cooperation and Economic Cooperation Instruments. The emergency aid reserve, which comes in addition to the above figure stated for commitments, was maintained at the level agreed at the Council’s second reading: €235 million.

- **Administration (Heading 5):** This heading of the budget consists of non-compulsory expenditure over which the European Parliament has the final decision. The European Parliament returned to a position similar to that of its first reading. It increased both commitments and payments by €92.8 million to €6,942 million. The most significant increase was made to the Commission’s budget which was increased by €82.2 million for commitments and payments.

- **Compensations (Heading 6):** Commitment and payment allocations of €444.5 million remained unchanged.
The Government’s main objectives when the Commission’s Preliminary Draft Budget for 2007 was published in May were to: control budget growth; maintain budget discipline; under Heading 4 (The EU as a Global Partner) ensure sufficient resources were allocated to CSFP, Transitional Support for Countries Affected by EU Sugar Regimes Reforms, Iraq and Afghanistan; under Heading 5 (Administration) ensure staff proposals were based on genuine need and accommodated within the ceilings of the heading; and under Heading 1b (Cohesion for Growth and Employment) ensure that allocations were in line with implementation capacity. Overall, the Government feels the adopted budget meets these objectives and that this is a good outcome for the UK. Budget discipline has been maintained by ensuring the budget is consistent with the inter-institutional ceilings. Budget growth was contained as a level of payments was agreed that remained under 1% of EU GNI. The final budget payments were set at €155.5 billion, equivalent to 0.99% of GNI or 0.98% of GNI for EU 27. More specifically:

— The Preservation and Management of Natural Resources budget was reduced by around €1 billion (to €56.3 billion) below the Commission’s original proposal, providing a more realistic budget overall.

— The Administration budget was reduced below the Commission’s original proposal by around €60 million for both payments and commitments, leaving a margin of €173 million for commitments. While we would have liked to have seen greater reprioritisation of the administration budget according to new EU priorities, the Commission has agreed to carry out a full screening exercise of personnel needs by 30 April. This should help ensure better justification of future staffing needs and encourage reprioritisation of resources to the necessary areas.

— Where External Actions are concerned:

— an allocation of €100 million commitments for actions in Iraq, €17 million above the Commission’s original proposal;

— an allocation of €661 million commitments was secured for Asia, providing an extra €36 million in addition to the Commission’s original proposal;

— the CFSP commitment allocation was set at €159 million, providing €86 million more than the EP had allocated in their first reading and providing a level of funds necessary to meet increasing EU needs, such as for the impending operation in Kosovo; and

— commitment levels for Transitional Support for Countries Affected by EU Sugar Regimes Reforms were secured at €165 million, the level initially proposed by the Commission.

— Finally, where the Cohesion for Growth and Employment budget was concerned, the Government was successful in ensuring the EP’s suggested further increases in Commitment and Payments were not adopted. The Government would have liked to see further reductions in this area, but a clear majority of Member States supported the allocation suggested by the Commission’s original proposal.

I hope this information is helpful to the Committee.

22 January 2007
### Annex A

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### Budget Heading

#### Economic and Financial Affairs, and International Trade (Sub-Committee A)

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**Appropriations for payments as % of GNI**

- **CA** = Commitment Appropriations; **PA** = Payment Appropriations.
- Figures may not add up exactly because of rounding.
- Conversion rate as of May 2006: £1 = €1.4405 and €1 = £0.69
ECONOMIC AND SOCIAL COHESION (11375/06)

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

Thank you very much for your Explanatory Memorandum 11375/06. This was considered by Sub-Committee A at their meeting on 17 October.

The Sub-Committee has decided to clear the document from scrutiny, however we would be grateful if you could keep us informed on what the Government’s response to the consultation, which closed on 22 May 2006 as mentioned in paragraph 28 of your Explanatory Memorandum, will be. We would also like to hear what actions the Government are taking to offer full support to the Commission for the successful implementation of the JEREMIE initiative, as was requested (under Paragraph 2.6.2 of the Communication).

24 October 2006

Letter from Rt Hon Margaret Hodge MP to the Chairman

Thank you for your letter of 24 October, about the above Explanatory Memorandum. I welcome your confirmation that your Committee has cleared the document from scrutiny.

On 23 October the Government published its response to the public consultation on a draft UK National Strategic Reference Framework for the EU Structural Funds 2007–13. I have attached a copy for information.\(^6\)

The Government's response, together with the final UK National Framework, set out the strategy for future Structural Funds spending across the UK, the allocations of funding for future Programmes, and the administrative arrangements for delivering the Programmes. The strategy establishes three high-level priorities for future Programmes: enterprise and innovation, skills and employment, and environmental and community sustainability.

Turning to the Joint European Resources for Micro to Medium Enterprises (JEREMIE) initiative, the Government has championed the use of financial engineering instruments to support enterprise and Small to Medium-Sized Enterprises (SMEs). We indicated our strong support for JEREMIE at its launch by the European Commission and the European Investment Bank (EIB)/European Investment Fund (EIF) in October 2005. We are committed to, and already taking an active part in, the analysis phase of JEREMIE in conjunction with the EIF. Once this analysis has been completed it will help to inform the UK’s decision as to the best possible financial architecture for getting the most from the UK’s Structural Funds receipts.

13 November 2006

ENERGY DUTIES (11167/06, 16190/06, 16528/06)

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

Thank you very much for your Explanatory Memorandum 11167/06. This was considered by Sub-Committee A at their meeting on 17 October. At this meeting the Sub-Committee decided to hold the document under scrutiny.

We would like to ask you to further explain the reasons why you wish to maintain those derogations, keeping in mind current Community environmental, energy and transport policy. We would also be grateful if you could provide us with a more detailed account of what would be the consequences were those derogations not renewed.

18 October 2006

Letter from Rt Hon Dawn Primarolo MP to the Chairman

Thank you for your letter of 18 October regarding the above Explanatory Memorandum (EM 11167/06). You have asked for further explanation of the reasons why the UK wishes to maintain its derogations from the Energy Products Directive and asked for a more detailed account of what the consequences would be if these derogations were not renewed.

As explained in the EM, the UK currently holds three derogations from the Directive:

— For air navigation other than that covered by Article 14(1)(b) of the Directive;

\(^6\) Can be found at www.dti.gov.uk/consultations
The Government has recently submitted its applications for renewal of these derogations to the Commission. Our decision to apply for continuation of the derogations followed an evidence—based assessment by HM Revenue and Customs of the effects of losing the derogations. This assessment made clear that the various costs of ending the derogations—both in terms of the administrative and compliance costs of adapting to the new tax treatment and the negative economic impact on the sectors involved—would be wholly disproportionate to the benefits that could be gained, for example, a small revenue and environmental gain.

The key arguments we found that justified applying to maintain the derogations, and which also highlight the consequences were they not renewed, are as follows:

Our estimate is that the revenue gain from removing the derogations would be minimal, with a total additional revenue of £25 million at most. This would represent a poor return for the extra resources that would have to be deployed to policing the new regime and preventing possible new opportunities for fraud (a minimum of 15 staff would be required to collect this extra revenue; currently each Member of staff working on oils taxation collects on average £41 million). As well as the increased administrative cost, there would be significant enforcement challenges in meeting the increased risk of fraud. There would also be a high opportunity cost because the UK would have to divert significant resources away from more effective activity elsewhere that delivers higher priority objectives both for the UK and EU.

Similarly, our analysis shows that the environmental benefit of ending the derogations would be almost negligible in the case of the derogations for private pleasure boating and air navigation, and in fact negative in the case of waste oils. As both private planes and boats use just a fraction of the non-road transport fuel (0.6% and 0.7% respectively) the total carbon savings would be around 0.005 million tonnes (mt). To place these savings in context, the UK’s Energy Review announced wide-ranging proposals that would save between 19 and 25 mt of carbon emissions by 2020. Moreover, losing the waste oils derogation would increase the risk of waste oil being dumped rather than recycled, with detrimental impacts on EU environmental and waste reduction objectives.

The costs for business and fuel users of complying with the new tax treatment if the derogations are not maintained is estimated to be as great as £110 million. These costs would include installation of additional engines for boat owners, and new pumping and storage facilities at airfields and marinas because of the need to supply different types of fuels. These costs would be wholly disproportionate to the minimal gains described above.

As well as significant compliance costs, there would be further negative economic effects of ending the derogations and these would have a disproportionate impact on some sectors. For example, loss of the derogation on private pleasure craft would hit boat owners on low incomes particularly hard (many live on houseboats). We also believe that there would be a particularly severe impact on areas where the EU is investing in regeneration through EU Structural and Cohesion Funds, such as the many coastal areas of the UK suffering from the decline of the fishing and shipbuilding industries. For private pleasure craft and air navigation, there would also be an adverse effect on small or medium sized enterprises (SMEs) who risk being driven out of the market, while ending the derogation on waste oils might make the waste oils recovery industry in the UK unsustainable.

Finally, there would also be potential unintended health and safety risks of not maintaining the derogations. For example, ending the derogation for private pleasure craft would be likely to reduce the number of ports where boats could refuel (as some suppliers would no longer choose to supply fuel to the private market, focusing instead on the commercial market), increasing the risk of boats being stranded at sea. Similarly, for air navigation there would be a risk of encouraging use of unleaded petrol with detrimental impact on engine performance and possible engine failure.

In terms of the impact of maintaining the derogations on Community policies, this would be minimal. There would be no material impact on the operation of the single market. In addition, there is unlikely to be any adverse impact on transport or energy policy, especially given that the size of the private pleasure craft and private air navigation sector represents only a very small fraction of the total UK transport sector and the fuel use thereof. There would be a very small carbon saving from ending these derogations but a clear adverse impact on Community environment policy from increased dumping of waste oils. Furthermore, there would be potential adverse effects on Community health and safety policies as detailed above.
Overall, we judged that the burdens imposed by removal of the derogations would be disproportionate to any benefits that could be achieved and therefore that ending the derogations would clearly not be in line with EU Better Regulation principles.

I hope you find this information helpful.

30 October 2006

Letter from the Chairman to Rt Hon Dawn Primarolo MP

Thank you for these Explanatory Memoranda (16190/06, 16528/06) which were considered by Sub Committee A on 16 January and 23 January 2007. The Sub-Committee cleared the documents from scrutiny, and wished to note that while they were not surprised that the Commission rejected the case made for continuation of the derogations, they were surprised that the Government has accepted the rejection.

The Committee also noted that the acceptance is in striking contrast to the forceful justification for the derogations advanced in your letter of 30 October 2006. The Committee were, as you will remember, surprised by the original Explanatory Memorandum’s content and wonder whether, on reflection, the terms of the letter of 30 October were suitable.

24 January 2007

FINANCIAL REGULATION (9628/06)

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

I am writing further to your Explanatory Memorandum 9628/06 on amendments to the Financial Regulation and my subsequent letter informing you that Sub-Committee A had decided to maintain the scrutiny reserve pending the publication of a report on financial management in the European Union. I understand from your officials that agreement is expected very soon. We have therefore considered the document a second time in the hope that we will be able to seek clarification and eventually clear it from scrutiny before agreement is reached. Whilst I do understand that agreement is necessary in order for the new Financial Regulation to come into operation at the beginning of next year, it is unfortunate that this may occur before our report on financial management is published.

Having reconsidered the Modified Proposal the Sub-Committee still do not consider that the scrutiny reserve should be lifted. Whilst we support the general thrust of the amendments where they seek to improve the management of the Communities’ Budget there remain a number of issues on which we wish to seek clarification. In order to clear the document from scrutiny before the Council meeting I would appreciate your prompt reply.

We would like to express our support for measures to improve and simplify the implementation of the Budget and in particular for the requirement that Member States submit an annual summary of available audits and declarations. However would you please provide more information on what such a summary will entail. Is it envisaged that the summary will be submitted under the authorisation of a Minister? What sort of audits and declarations will be included in the summary and to what level of detail? Will all Member States be required to submit audits of the same areas and will they be required to prepare these using similar methodologies and internationally recognised standards? What use will the Commission put these summaries to? Finally, why are these audits not being submitted to the European Court of Auditors?

On the issue of a tolerable level of risk I noted that in your letter to the Chairman of the Commons European Scrutiny Committee you express support for introducing different thresholds of tolerable irregularities. Again, we are broadly in support of this position. However we would like to know more about how this would work in practice. Who would take the decision over what level of errors can be tolerated? On what basis would they take this decision? Is there a risk that this will lead to a system where some expenditure is controlled strictly whilst in other areas more lax controls are operated?

On the issue of the abolition of the centralised system of ex-ante control we note that the Commission’s report (annexed to EM 11021/05) indicates that the new system is an improvement. What is the Government’s position? Furthermore we are concerned that the report does not appear to address the effect on the Commission’s administration itself. What assurances have you received from the Commission that the new system is working well and are you content?

24 October 2006
Letter from Ed Balls MP to the Chairman

Thank you for your letter of 24 October 2006 concerning your Committee’s consideration of the Explanatory Memorandum referenced above.

Your letter advises that you are unable to clear this EM from scrutiny and asks for clarification on certain issues. I should perhaps start by advising you that, following the completion of its discussions, Council has now reached a position on the Financial Regulation. However, the UK will continue to abstain given your Lordship’s concerns over this issue. However, the amended Financial Regulation needs to come into force on 1 January 2007 and conciliation will take place with the European Parliament on 21 November.

You ask for more information on what an annual summary of available audits and declarations would entail, whether this would be included under the authorisation of a Minister, what sort of audits and declarations would be included and to what level of detail. Although the finer details of this proposal have yet to be ironed out, it will be a matter for each Member State to decide under whose authority such declarations are submitted. For the UK it is likely that this will be done through auditors/accounting officers. This would mean that the person who already has responsibility for either the management or auditing of the systems—and who already submits reports and/or declarations under existing legislation—would also make this summary declaration. International auditing standards would apply to these declarations and it is hoped that the European Commission/European Court of Auditors (ECA) would be able to take assurance from these and thus limit or better target their own enquiries as a result.

You also ask about tolerable risk. As you are aware, the ECA currently uses a blanket materiality level of 2% and, thus, if they find an error above this, within the limited sample of transactions they look at, the whole of that programme is deemed to be at risk of error. In areas such as Structural Funds and external expenditure, which are designed to do the most good in poorer areas and countries, managing funds to within this degree of error is a difficult task. The concept being considered here would be one in which, perhaps, a higher materiality level might be acceptable in some high-risk areas of the Budget and possibly even a reduced materiality level in others where the risk of mis-spent expenditure is considered low. However, although Member States were not opposed to the idea per se, Council discussions on this matter have been unable to resolve the question of how this will work in practice and it was felt that the Commission had not adequately thought the proposal through. In particular, Council was not attracted to the proposal to use Activity Statements as a means of agreeing levels of tolerable risk. The original suggestion from the Court of Auditors was that both arms of the budget authority should agree levels of tolerable risk and that this would be better done through the next revision of the sectoral regulations. Council has thus proposed, for the sake of unanimous agreement, that the text on tolerable risk should be deleted from the Financial Regulation. However, at the request of the United Kingdom Government, a requirement that risk must be “adequately managed” has been included in a new Article 28a(2)(e). The new Article 28a reads as follows:

“Article 28a

1. The budget shall be implemented in compliance with effective and efficient internal control as appropriate in each management mode, and in accordance with the relevant sector-specific regulations.

2. For the purposes of the implementation of the budget, internal control is defined as a process applicable at all levels of the management and designed to provide reasonable assurance on the achievement of the following objectives:

(a) effectiveness, efficiency and economy of operations;
(b) reliability of reporting;
(c) safeguarding of assets and information;
(d) prevention and detection of fraud and irregularities;
(e) adequate management of the risks relating to the legality and regularity of the underlying transactions, taking into account the multi-annual character of programmes as well as the nature of the payments concerned”.

It is possible there could be further changes during the conciliation procedure with the European Parliament.

Finally, you refer to the abolition of ex-ante control and ask what the Government’s position is on this, whether assurances have been made that the new system is working well and whether we are content. The Government has always supported the move to abolish the ex ante function. Under this system, proposals for expenditure were authorised by the Commission’s Financial Controller, but there was little or no attempt to check whether this authorised expenditure had actually been carried out. This has now been replaced with a
system of *ex post* control, which is the responsibility of the Commission’s Internal Audit Service (IAS) to carry out. The IAS is doing a good job, and its findings contribute to the annual declarations of assurance given by each Director-General in their Annual Activity Reports. This is much more akin to the control systems operated by the UK and other Member States, and it has introduced, as Lord Kinnock’s reforms intended, a new culture of accountability to the Commission.

5 November 2006

**Letter from the Chairman to Ed Balls MP**

Thank you for your letter of 5 November regarding EM 9628/06. This was considered by Sub-Committee A at their meeting on 28 November, and the Sub-Committee decided to clear the Proposal from scrutiny. I would be grateful if you could let me know whether any changes were made during conciliation with Parliament.

This Proposal was originally held under scrutiny as part of the inquiry into Financial Management and Fraud in the European Union. We are pleased that you have chosen to send copies of this report to your counterparts in other Member States and look forward to the Government’s formal response in due course. You will be aware that the scrutiny reserve on the items which were held in conjunction with the inquiry will not be lifted until the Report is debated. With this in mind, while we are lifting the reserve on this Proposal, the Committee will reserve the right to consider it with the Report on the floor of the House.

29 November 2006

**FINANCIAL SERVICES (12915/06)**

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

Thank you very much for your Explanatory Memorandum 12915/06. This was considered by Sub-Committee A at their meeting on 24 October.

The Sub-Committee is concerned that legislation in this area should be light touch and therefore has decided to hold the document under scrutiny pending your clarification of this.

In addition we would be interested to hear more on the outcomes of the informal consultation that you have undertaken on this proposed Directive. In particular, we would be interested to know the views of UK-based financial institutions on the proposal to achieve “a high level of harmonisation” of the criteria for the prudential assessment of acquirers together with your response to this.

The Committee would also like to know why a UK Regulatory Impact Assessment will not be produced until after the Directive is agreed.

I look forward to receiving updates on the negotiation process for this proposed Directive.

24 October 2006

**Letter from Ed Balls MP to the Chairman**

Thank you for your letter regarding the above Commission proposal to amend the supervisory review process for cross-border mergers and acquisitions in five EU directives.

This proposal will not jeopardise the UK’s light touch approach to regulation. The amended legislation explicitly states that the measures should be proportionate to their aim. The amendments will make the procedure more transparent and predictable for EU firms. It will facilitate an open and dynamic single market and will ultimately bring other EU Member States’ procedures into line with those of the UK Financial Services Authority. UK firms will therefore benefit as they will not have to comply with 25 different sets of legislation, but instead will follow a process if they plan to merge or acquire a foreign-owned firm, that is the same as the current process in the UK. This is a reduction in the burden on firms and will encourage greater competition in the EU financial services market.

As you are aware, HM Treasury has carried out informal consultation leading up to the publication of the Commission’s official proposal and issued a discussion paper on the official proposal on 25 September 2006.

HM Treasury has consulted with a vast number of credit institutions, insurance and securities firms, as well as all the major trade associations through both informal and written consultation.

The written discussion paper of 25 October received ten official responses from a wide variety of firms, including the major trade associations and one consumer association.

All respondents agreed that the current process and criteria for cross-border mergers and acquisitions could be improved to limit political intervention and were keen to find a transparent, market-friendly solution.
30 ECONOMIC AND FINANCIAL AFFAIRS, AND INTERNATIONAL TRADE (SUB-COMMITTEE A)

On the issue of maximum harmonisation, on which you requested further information, all respondents agreed that the key elements of the supervisory review process should be aligned as far as possible across EU Member States to ensure consistency of approach and to encourage the proper functioning of the market. The key rationale for this was the divergence of national rules, which had allowed scope for the abuse of supervisory power.

On the more specific issues raised in the discussion paper respondents largely agreed with the following HM Treasury priorities for negotiations:

— **Criteria**—In order to minimise the scope for supervisory abuse, the criteria for the approval of mergers and acquisitions should be exhaustive and limited to prudential considerations.

— **Level of application**—The application of the current regime to the likes of fund managers, custodians, depositaries and trustees who have little if any influence over the number of shares they hold in a particular company is a severe burden on these operators. The UK should negotiate changes so that the legislation only applies to firms intending to take a controlling stake in both the voting rights and the capital of another firm.

— **Burden of proof**—The burden of proof in the Commission proposal is currently on the supervisory authority to prove that the proposed acquirer has not met the criteria. This is a reversal of the burden of proof from the initial authorisation stage to carry out business within a member state. It would seem logical to ensure consistency between the two approaches.

— **Appropriate time period**—The FSA tend to complete around 75% of their cases within an expedited time period to that allowed by the existing European directives, much closer to the time period suggested in the Commission proposal. In these cases, an expedited time period with only one option of “stopping-the-clock” for 10 days would provide a clearer, more efficient process.

Regarding the preparation of a regulatory impact assessment, the negotiation of this directive has been unusual in that the time period was expedited. The publication of the Commission proposal in September and the expected political agreement in Council in November is a particularly short period of time for EU negotiations. Nonetheless, my officials are currently updating the partial RIA issued with the HM Treasury domestic consultation “Reducing reporting requirements: A consultation on reform of the ‘controllers regime’ in Part XII of the Financial Services and Markets Act 2000” in line with the Commission proposal. I would be happy to provide you with the partial RIA on its completion.

I hope I have covered all the issues raised in your letter.

26 October 2006

GLOBAL EUROPE: COMPETING IN THE WORLD (13715/06)

**Letter from the Chairman to Jim Fitzpatrick MP, Parliamentary Under Secretary of State for Employment Relations and Postal Services, Department of Trade and Industry**

Thank you very much for your Explanatory Memorandum 13715/06. This was considered by Sub-Committee A at their meeting on 7 November.

The Sub-Committee cleared the document from scrutiny, as it does not propose any new policy initiatives. The Sub-Committee were disappointed, however, that a Communication which faced likely adoption on 13 November only had its Explanatory Memorandum tabled on 27 October. This seemed particularly disappointing in this case as the document was produced following considerable consultation by the Commission and so was anticipated. This short timescale makes effective scrutiny difficult, and I hope that you will be able to consider the need for more thorough consultation once the individual policy suggestions made in this Communication begin to be brought forward by the Commission in their own right.

The Sub-Committee would have also welcomed sight of the draft Council Conclusions which you refer to in paragraph 14 of the Explanatory Memorandum. I would be grateful if you could send details of the conclusions that are adopted by the Council following the GAERC meeting.

16 November 2006
Letter from Jim Fitzpatrick MP to the Chairman

Thank you for your letter of 16 November. I am very grateful to Sub-Committee A for clearing Explanatory Memorandum 13715/06 from scrutiny.

I regret that the timing of our Explanatory Memorandum left you with a short timescale for scrutiny. Even though the European Commission had consulted Member States on their plans for the Communication, they chose not to give us an opportunity to review the text before its publication on 5 October. We will, though, strive to ensure that subsequent policy suggestions brought forward by the Commission as a result of this Communication reach you with greater time for consideration.

As requested, I enclose a copy of the Council Conclusions on the Communication. For clarity, I should perhaps note that it was these Conclusions, not the Communication itself, which were adopted at the GAERC on 13 November.

5 December 2006

Annex A

COUNCIL ADOPTED THE FOLLOWING CONCLUSIONS

“The Council

Welcomes the Commission’s Communication Global Europe: Competing in the World, discussing the external aspects of Europe’s competitiveness and linking external policies to the EU’s broader competitiveness agenda, as presented in the Lisbon Strategy for Growth and Jobs.

Shares the Commission’s analysis on the changing context of the EU’s trade and competitiveness policy, and on the challenges posed by globalisation. The ongoing transformations in the global economic order create significant opportunities for growth and development, but also necessitate rapid and deep-going adjustments. For the ELT to maintain its competitive position, it must constantly strive to improve upon its policy and regulatory framework.

Acknowledges that an effective policy to foster competitiveness must cover both internal and external measures. Trade policy can make a significant contribution to growth and jobs, and must therefore be considered an essential element of a European policy of competitiveness. Internal and external policies should work in tandem, in a coherent and mutually supporting way.

Shares the Commission’s view on the basic parameters concerning the future development of the external aspects of the EU’s competitiveness and its recognition of the need for an integrated, coherent approach to domestic and global challenges.

Therefore considers that:

1. Trade policy must build upon the premise that Europe’s economic prosperity is inextricably linked to that of other regions of the world. Hence, the answer to growing global competition is not to protect the EU from fair competition, but to adopt an increasingly active policy of openness at home and abroad.

2. Addressing barriers to trade, investment and business activity in third countries plays a key role in improving the competitive position of European industries. Our work on trade barriers must be increasingly broadly based so that it looks at the whole operating environment of European firms in third markets and places more emphasis on non-transparent and discriminatory regulatory obstacles, and restrictions to competition. This is particularly important for small and medium sized enterprises (SMEs).

3. It is equally important to guarantee an effective, secure and non-discriminatory access of European companies to raw materials, including energy, and to other inputs to the production process. This underlines the need to promote open trading regimes in the EU and in third countries, and to tackle any foreign restrictions to exports that are likely to harm EU competitiveness.

4. The completion of the internal market and effective innovation policies at the European level are cornerstones of European competitiveness and a critical platform for the EU’s success. A well functioning internal market based on clear and consistent rules is a precondition for the development of successful global firms. It also serves as a solid demonstration of how barriers to trade and investment can be eliminated for increasing productivity and growth. External aspects of competitiveness will have to be factored in the forthcoming Single Market review, and should be an integral part of the annual report on the implementation of the Lisbon strategy.
5. It is important to ensure that external considerations, including the global position of the EU and the policies of other countries, are taken into account when setting key internal policies. The goal must generally be to avoid provisions in the EU that impose undue burdens on European companies. The EU must play a leading role in sharing best practice and developing high quality global rules and standards. To do so effectively it must actively look for means to improve the compatibility between its regulations and those of its main trading partners. Progress in regulatory cooperation can bring about considerable benefits to all parties and lessen the risks of unnecessary compliance costs for businesses.

6. In current conditions where innovation is a key factor in the success of new business, IPR violations and counterfeiting deprive innovators of rewards for their investment and risk-taking. An effective protection of intellectual property is therefore an important priority in global competitive markets.

7. The EU will ensure that the WTO remains centre stage in the international trading system and the cornerstone of a strong and rules-based multilateral trading system. Achieving an ambitious outcome in the Doha Development agenda remains our first priority and the EU will work intensively to restart the negotiations as soon as possible.

8. Building on the platform of the WTO and in parallel to our efforts to resume the DDA negotiations, there is a need for complementary mechanisms that allow us to continue to achieve additional improvements in market access and business environment, particularly with our future major trading partners. IPR enforcement, public procurement, regulatory cooperation, competition (including state aid) and investment are all key issues in this respect.

9. As one of the policy initiatives, the EU should aim at a new generation of WTO-compatible FTAs that extend beyond present agreements and build towards future multilateral negotiations. The agreements should strive for the highest possible degree of trade liberalisation, taking into account their positive contribution to the EU’s competitiveness and their impact on internal European policies. The agreements, which should be part of a coherent framework of the EU’s relations with each partner, should include far-reaching liberalisation of services and investment and should place special emphasis on the elimination of non-tariff barriers and on regulatory issues. In setting geographical priorities for these agreements, economic considerations should play a primary role, notwithstanding other, political considerations.

10. Based on these criteria, the Council supports the early launch of negotiations with ASEAN countries, India and South Korea. For economic reasons but also given their role in the EU’s neighbourhood, negotiations with Russia and Ukraine would be justified as soon as their WTO accession processes have been completed. Special attention should be paid to finalising the EU’s ongoing negotiating processes, fulfilling the EU’s existing commitments and to the development of the Transatlantic trading relationship.

11. In the context of globalisation and increasing openness, special attention must be paid to policy measures that help European citizens and businesses adapt to these changes. It is also important to ensure that the positive effects of trade opening benefit all citizens and are not captured by specific interests. A broad distribution of benefits through competitive markets is essential for winning the political argument for change.

12. All future initiatives will have to take into account the needs of developing countries and the potential impact of any new policies on them, in particular as concerns poor countries’ access to EU markets, sustainable and economic development of these countries, and the goal of poverty reduction. We must work together with our trading partners to improve social and environmental standards.

Invites the Commission, as appropriate and without undue delay, to submit proposals on the different new initiatives to the Council for further discussion. These include the strategy on China, published on 24 October 2006, a new generation of carefully selected and prioritised FTAs, proposals on IPR enforcement and public procurement, a renewed market access strategy and a Green Paper on trade defence instruments.

Stresses the need for transparency throughout the whole process and in particular for all initiatives proposals for negotiating directives to be thoroughly discussed with Members States. Each FTA negotiation will need a separate proposal for negotiating directives.

Underlines the importance, for internal and external competitiveness, of prompt and comprehensive implementation of the renewed Lisbon strategy.

Invites future presidencies to work across individual policy domains and beyond the agenda set out in the Commission’s communication, in order to deal comprehensively with globalisation and its effects.

In the light of the significance of issues concerning the external aspects of Europe’s competitiveness, agrees to revert to the matter at its forthcoming meetings.
INTERNAL AUDITS: ANNUAL REPORT TO THE DISCHARGE AUTHORITY (10480/06)

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

I am pleased to enclose a copy of the UK’s response to the European Court of Auditors’ (ECA) Report on the 2005 EC Budget, including responses to specific UK references therein. The Commission is required to send a summary of Member States’ responses to the ECA, the Council and the European Parliament. These responses may be analysed in the Commission’s follow-up report on the financial year 2005.

As Member States’ responses are not published in full, your committee may find it opportune to have the UK response in full at this stage. The response includes the contributions of the UK departments responsible for the administration and/or policy of the different sectors of the EC budget. Member States’ responses are a useful tool for improving the financial management of the Community appropriations, which could also reduce expenditure.

20 December 2006
## Table 1: Please enter your comments to the following observations made by the Court in the 2005 Annual report

*Reference is made to the points in the report where the observations are made.*

<table>
<thead>
<tr>
<th>Point</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter 1</td>
<td></td>
</tr>
<tr>
<td>1.11. Experience in public administrations undertaking similar reforms(^9) shows that projects of a scale and complexity similar to the modernisation of the Communities' accounts inevitably face a variety of problems which complicate and delay their complete implementation. Against this background, important progress has been achieved:</td>
<td></td>
</tr>
<tr>
<td>— on 1 January 2005, the Commission moved the general accounting of the EU from cash-based to accruals-based accounts. New accounting rules(^10) and methods, a new harmonised chart of accounts and new consolidation tools were introduced in all Community institutions and agencies;</td>
<td></td>
</tr>
<tr>
<td>— stakeholders were provided with individual and consolidated accounts which comprise the new obligatory elements and contain more detailed information about the resources controlled by the different entities, the costs of their operations and the cash flow operations.</td>
<td></td>
</tr>
</tbody>
</table>

\(^9\) For instance at the United Nations Headquarters and the Organisation for Economic Cooperation and Development or in Australia, Denmark, France, Spain, Sweden, the United Kingdom and the United States.

\(^10\) The new set of 15 accounting rules adopted by the Commission’s Accounting Officer are based on the International Public Sector Accounting Standards (IPSAS) and for accounting transactions that are not yet covered by the IPSAS, on the relevant International Accounting Standards (IAS) / International Financial Reporting Standards (IFRS).

Chapter 2

Table 2.1. See comments on specific chapter references.

Chapter 3

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Annex A
Chapter 4

4.4. The Court’s audit of the accounts cannot cover undeclared imports and imports that have escaped customs surveillance. However, its audit work included an evaluation of supervisory and control systems, both at the Commission and in Member States, to assess whether they gave reasonable assurance of completeness. It consisted of a review of the organisation of customs supervision and of the national systems for accounting for traditional own resources in eight Member States3 (see paragraph 4.22); an examination of the effectiveness of the mutual assistance arrangements (paragraphs 4.10–4.12); an examination of the Commission’s accounts for traditional own resources; and an analysis of the flow of duties in order to gain reasonable assurance that the amounts recorded were complete and correct.

4.7. As in previous years the Court’s audit and the Commission’s inspections (see paragraph 4.9) found systematic problems with the B accounts in a number of Member States4. Some errors are related to the conditions for entry in the accounts. In Member States whose B accounts represent 34 % of the balance, customs debts that are partly secured are nevertheless entered in full in the B accounts, leading to delay in making the secured part available to the Commission. Other errors arise because Member States have not adapted their accounting systems so as to record the appeal or recovery accurately, or because there is insufficient internal control over the compilation of reports. 22.7 million euro of potential duties remain under discussion between the Commission and Germany as a result of such a problem.

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3 Belgium, the Czech Republic, Germany, Ireland, Luxembourg, Malta, the Netherlands, and the United Kingdom. In addition, the traditional own resources accounting systems were reviewed in Italy, Poland and Sweden.

4 Belgium, the Czech Republic, Germany, Ireland, Italy, Greece, Spain, Finland and the United Kingdom.
4.22. The systems for customs supervision and for accounting for traditional own resources were generally found to be functioning correctly. However, an examination of Community transit found that many Member States\(^18\) did not have effective systems for starting enquiries on time when there was doubt about the arrival of consignments, and there were also considerable delays in later stages of the enquiry and recovery procedures. As a result duties were frequently collected late in such cases. In several Member States\(^19\) customs control of goods in temporary storage\(^20\) was not sufficient to ensure that the time-limits and other rules in the Community Customs Code were observed. In one Member State\(^21\) the intervals between customs audits of economic operators could routinely exceed three years, thus putting traditional own resources at risk because of time-barring.

The UK authorities agree with the Commission that NCTS should produce improvements concerning the timely discharge of transit movements. We are confident that the Commission’s inspection of UK systems during November 2006 will produce satisfactory results.

The UK authorities place reliance on the trader to ensure that goods are assigned to a customs approved treatment within the prescribed time limits for temporary storage. The UK has also taken steps to tighten up procedures for goods held in temporary storage including reminding the trade of the need to notify HMRC if time limits are likely to be exceeded.

We have now initiated a second national CFSP project to carry out an assurance event on all traders not addressed during the first project. This will assist the UK in identifying the levels of non-compliance and determine the level of future assurance activity of CFSP traders.

The UK carries out post clearance audits as part of a risk management framework designed to ensure that the correct amount of revenue is accounted for at the correct time. Within this framework, we recognise that certain regimes are high-risk and warrant a higher degree of intervention and assurance. However, we do not accept that this will always warrant a full systems audit. In an attempt to use our resources efficiently and target our resources to assuring the highest risks, we use different methods of assurance and intervention according to the level of risk. These methods include desk audits using our computer interrogation tool MSS, educational or authorisation visits targeted audit checks of specific transactions or risks, physical examination of specific goods or consignments by Mobile Assurance Teams and full systems audit. It is the view of the UK that these different approaches, taken together as a cohesive whole, do provide an effective and robust strategy for assuring the revenue risks.

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\(^{18}\) Belgium, Germany, Spain, France, Italy, Latvia, Hungary, Poland, Slovenia and Sweden.

\(^{19}\) The Czech Republic, Germany, Malta and the United Kingdom.

\(^{20}\) Goods that have arrived and been included on a summary customs declaration, but which are awaiting the formalities necessary for them to be assigned a definite customs-approved treatment or use (such as release for free circulation).

\(^{21}\) The United Kingdom. Under the Community Customs Code additional customs duty cannot normally be charged more than three years after the original customs debt was incurred.

Table 4.1. No comment necessary.
Table 4.2. No comment necessary.
Table 4.3. No comment necessary.
Chapter 5

5.22. For the sheep and goat premiums the number of overclaimed animals decreased from 8.2% in 2003 to 6.3%. Italy and Slovenia report significantly higher levels of error for sheep and goat premiums (10% and 24.1% respectively) than the other Member States (1.2%). The Court found problems in Greece, Spain, France, Netherlands and the United Kingdom. The flock registers are poorly maintained. The registers cannot be relied upon to confirm that the retention period requirements have been met or to reconcile the claim with the number of sheep found on inspection.

5.35. The Court’s audit of physical and/or substitution checks in 11 Member States from 2004 to 2006 concluded that:

a) the fundamental requirement that exporters should not have tacit prior warning of such checks at the point of loading had not been systematically complied with (Belgium, Denmark, Germany, France, Italy, Netherlands, United Kingdom);

b) there were significant weaknesses in the verification of ingredients used in the manufacture of “Non-Annex I” goods such as biscuits, confectionery, whisky, etc. on which refunds are paid (Belgium, Germany, France, Italy, United Kingdom);

c) excessive numbers of physical checks had been carried out on consignments for which the refund claim was less than 200 euro;

d) substitution checks are not carried out at the point of exit from the EU on significant numbers of consignments which have been customs-sealed despite not having been physically checked at the point of loading. In particular, Denmark and the Netherlands allowed authorised exporters to affix customs seals themselves;

e) as the physical presence of customs officials at the point of taking goods under customs control at the customs office of exit from the EU has been replaced by computerised inventory systems in the United Kingdom and certain French ports, the necessary checks that customs seals have not been broken or removed are no longer carried out.

The UK have encouraged, and will continue to encourage, claimants and keepers to maintain up to date and adequate records. The standard has improved over the years. However, where inspections uncover records which are non-compliant, the keeper/producer is informed and penalty or sanction action initiated as appropriate.

5.35 a) The Court’s auditors had initially considered that reports produced from the United Kingdom’s CHIEF system gave exporters prior notification of physical checks. Our understanding is that following a subsequent visit to the UK in September 2006 the auditors were satisfied that this is not the case.

5.35 b) The United Kingdom understands that this relates to the procedures applied when manufacturers fail to retain adequate records to support the manufacture of goods on which refund is subsequently paid. The United Kingdom is currently considering the concerns raised by the Court.

5.35 c) Apart from occasional checks to prevent fraud and abuses, the United Kingdom now excludes low value refund consignments from its programme of physical checks."

5.35 e) The use of computerised inventory systems in the United Kingdom has not replaced the physical presence of customs officers but has allowed them to be deployed more efficiently. The United Kingdom is, however, aware of the Court’s concerns and is currently considering the necessary steps required to address them.
5.73. The Court examined the implementation of the Slaughter Premium Scheme in the context of the follow-up of the Court’s Special Report No 6/2004. The slaughter premium scheme is one of the premium schemes relying on the bovine identification system\textsuperscript{47}. The premium is paid for the slaughter or export from the EU of adult cattle and calves.

\textsuperscript{47} The Court examined its implementation by the Commission and in selected Member States (Germany (North Rhine-Westphalia), Spain (Aragon), France, Ireland, Italy, the Netherlands and the United Kingdom (England)).

5.74. The design of the scheme facilitates adequate control over payments in respect of animals which are slaughtered in the Member State of payment. However checks relating to the minority of animals (1.2 % on average in the regions examined) which are slaughtered in one Member State and for which a premium is paid in another are not as rigorous. The transfer of information between Member States relating to such cases is incomplete and does not ensure that all eligibility criteria for the premium are verified before payment. Germany and the Netherlands paid the premium in some cases where confirmation of slaughter from other Member States had not been received before payment. For the Member States visited, only Ireland and the United Kingdom (for animals slaughtered in Northern Ireland) had arranged to exchange information automatically between the relevant databases.

Table 5.1.
No comment necessary.

Table 5.2.
No comment necessary.

Table 5.3.
No comment necessary.

Figure 5.3.
No comment necessary.

Figure 5.4.
No comment necessary.

Chapter 6

6.15. The Court found certain types of error appearing systematically in the projects for certain programmes. Examples are:

- ERDF Objective 1 United Kingdom (South Yorkshire): declaration of EU grant exceeding the co-financing rate without proper justification;
- ESF EQUAL Community Initiative Spain: inadequate supporting evidence for the expenditure declared because the training organisations in receipt of funding failed to clearly identify the ESF activity in their accounting systems;

The UK welcomes the Court’s comments which recognise that the UK and Ireland have set up procedures to exchange information automatically between their relevant databases.

The South Yorkshire Objective 1 programme was visited during September and October 2005 by the Court of Auditors who discovered a number of apparent errors and system weaknesses. Many areas/recommendations of the report have since been addressed, withdrawn or further clarification sought. For example, further improvements have been made to the management and control system by the preparation of guidance notes (which all GOs are now administering) on:
— FIFG France: the verification and checking activities carried out by the Direction Départementale des Affaires Maritimes prior to the payment of an invoice were not based on adequate supporting documentation.

(a) Completion of Article 9 Certificates (declaration of expenditure to the EC)—April 2006,

(b) Overheads; calculations and apportionments—October 2005 and

(c) Article 4 Monitoring Assurance Framework—November 2005

Although we support strict financial control, it is disappointing that South Yorkshire should receive such adverse comments on the management of ERDF. It should be recognised that most errors are usually small amounts, paid as ineligible expenditure (rather than fraud against the EC budget), most of which are later corrected.

See comments on paragraph 6.15 and in Table 2.2 below.

Table 6.1.
Chapter 7–9

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Chapter 10
Table 10.4.

Chapter 11, EDF

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No comment necessary.
Table 2.1: Details on findings made by the Court in your country

<table>
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<tr>
<th>Finding no.</th>
<th>The Court’s reference in the letter mentioned above</th>
<th>Category</th>
<th>The Court’s description of the finding (this item is presented in the language used by the Court in its internal register of findings)</th>
<th>Transaction value (EUR)</th>
<th>Size of irregularity (as per cent of transaction value)</th>
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<td></td>
<td>1. In the absence of an open and competitive tender, no justification of real cost.</td>
<td>201 077.61</td>
<td>100.00</td>
</tr>
<tr>
<td>UK28</td>
<td>05.P.R2.SEP.2104-03</td>
<td></td>
<td>2. The project implemented in practice did not correspond with the aims and target groups stated in the proposal and in the contract.</td>
<td>123 414.93</td>
<td>100.00</td>
</tr>
<tr>
<td>UK29</td>
<td>05.P.R2.SEP.2104-04</td>
<td></td>
<td>No audit trail, no supporting documents</td>
<td>548 807.46</td>
<td>100.00</td>
</tr>
<tr>
<td>UK30</td>
<td>05.P.R2.SEP.2104-05</td>
<td></td>
<td>In the absence of an open and competitive tender, no justification of real cost</td>
<td>192 034.33</td>
<td>100.00</td>
</tr>
<tr>
<td>UK31</td>
<td>05.P.R2.SEP.2104-06</td>
<td>No audit trail, no supporting documents</td>
<td>856 932.84</td>
<td>100.00</td>
<td></td>
</tr>
<tr>
<td>UK32</td>
<td>05.P.R2.SEP.2104-07</td>
<td>In the absence of an open and competitive tender, no audit trail and no supporting documents.</td>
<td>1 223 880.60</td>
<td>100.00</td>
<td></td>
</tr>
<tr>
<td>UK33</td>
<td>05.P.R2.SEP.2104-08</td>
<td>In the absence of an open and competitive tender, no evidence provided for the declared expenditure</td>
<td>111 434.33</td>
<td>100.00</td>
<td></td>
</tr>
<tr>
<td>UK34</td>
<td>05.P.R2.SEP.2104-09</td>
<td>Absence of proof that the flat rate used by LSC is obviously lower than the real cost</td>
<td>0.00</td>
<td>100.00</td>
<td></td>
</tr>
<tr>
<td>UK35</td>
<td>05.P.R2.SEP.2104-10</td>
<td>Structural actions Absence of proof that the flat rate used by the LSC is obviously lower than the real cost</td>
<td>0.00</td>
<td>100.00</td>
<td></td>
</tr>
<tr>
<td>UK36</td>
<td>05.SYS.R2.SEP.2104</td>
<td>No Article 4 checks on the level of the final recipient by the Managing Authority</td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>UK37</td>
<td>05.SYS.R2.SEP.2104</td>
<td>Identification of projects declared as “match funding” (co-financing) only at the moment of the preparation of the payment claim, hence no management and control under ESF rules.</td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>UK38</td>
<td>05.SYS.R2.SEP.2104</td>
<td>In the absence of an open and competitive tender for the project selection, justification of real underlying expenditure should have been requested.</td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>UK39</td>
<td>05.SYS.R2.SEP.2104</td>
<td>Reimbursement of project costs on the basis of flat rates</td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>UK40</td>
<td>05.SYS.R2.SEP.2104</td>
<td>The conditions of Article 9 of Regulation 438/01 were not fulfilled when the Paying Authority certified the statement of expenditure</td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>UK41</td>
<td>05.SYS.R2.SEP.2104</td>
<td>No identification of the declared “match funding” (co-financing) by Jobcentre Plus (JCP) London</td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
</tbody>
</table>

The European Court of Auditors stated the findings below in a letter sent to your National Supreme Audit Institution on 28.4.2006.

The European Court of Auditors used as its reference: PF-2049

| UK42  | 05.P.R1.F1A.1084 | Physically the animals on the spot—Missing documentary evidence | 10 723.55 | 5.30 |
| UK43  | 05.P.R1.F1A.1087 | Agricultural policy 1.24% Overdeclaration of Arable Area | 6 013.76 | 1.24 |
| UK44  | 05.P.R1.F1A.1091 | Measurement—Overdeclaration | 9 198.18 | 0.73 |
| UK45  | 05.P.R1.F1A.1152 | Error in the completeness of the risk analyse data base | N/A | N/A |

The European Court of Auditors stated the findings below in a letter sent to your National Supreme Audit Institution on 6.4.2006.

The European Court of Auditors used as its reference: PF-2077

| UK46  | N/A | Agricultural policy Regulation 4045/89 review | N/A | N/A |
### Table 2.2: Do you agree with the Court’s findings?

*(Please mark with an X if you agree fully, agree partially or do not agree)*

<table>
<thead>
<tr>
<th>Finding no</th>
<th>Agree fully</th>
<th>Agree partially</th>
<th>Do NOT agree</th>
<th>If you agree fully/partially: What is in your opinion the reason for the finding occurring?</th>
<th>If you do not agree: Why do you not agree with the Court</th>
<th>Have you taken or will you be taking action to follow up the finding (for instance in order to prevent it from recurring)? If yes, then please describe action and expected outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>UK01</td>
<td>X</td>
<td></td>
<td></td>
<td>24 Wrong classification</td>
<td>New surveillance licence not required</td>
<td></td>
</tr>
<tr>
<td>UK02</td>
<td>X</td>
<td></td>
<td></td>
<td>3 Failure to follow departmental guidance</td>
<td>Introduce more management checks</td>
<td></td>
</tr>
<tr>
<td>UK03</td>
<td>X</td>
<td></td>
<td></td>
<td>4–7 Impractical to check every transaction in the B Account</td>
<td>Introduce more assurance checks</td>
<td></td>
</tr>
<tr>
<td>UK04</td>
<td>X</td>
<td></td>
<td></td>
<td>13–14 Poor state of trader’s records</td>
<td>Authorisation revoked</td>
<td></td>
</tr>
<tr>
<td>UK05</td>
<td>X</td>
<td></td>
<td></td>
<td>8–12 CFSP project evaluation</td>
<td>Project findings will be provided to the Court</td>
<td></td>
</tr>
<tr>
<td>UK06</td>
<td>X</td>
<td></td>
<td></td>
<td>18–19 Risk that we do not receive supplementary declarations in respect of all simplified declarations</td>
<td>Best and realistically addressed during assurance activity, in particular the national projects. Some new monitoring procedures now carried out by team in Leeds.</td>
<td></td>
</tr>
<tr>
<td>UK07</td>
<td>X</td>
<td></td>
<td></td>
<td>20–22 Failure to follow departmental guidance</td>
<td>Further improvements to monitoring arrangements.</td>
<td></td>
</tr>
<tr>
<td>UK08</td>
<td>X</td>
<td></td>
<td></td>
<td>8–12 Interval between assurance visits may exceed three years</td>
<td>2nd national project will assist determining future levels of assurance activity</td>
<td></td>
</tr>
<tr>
<td>UK09</td>
<td>X</td>
<td></td>
<td></td>
<td>15–17 A risk that some LCP traders may not assign goods to a customs approved treatment within prescribed time limits</td>
<td>Letter sent to all Local Clearance traders tightening up procedures. Have introduced a rolling programme to ensure LCP traders assign consignments to a customs procedure within the prescribed time limits.</td>
<td></td>
</tr>
<tr>
<td>UK10</td>
<td>X</td>
<td></td>
<td></td>
<td>Accept that the old premises did not acknowledge support prominently</td>
<td>New premises did show acknowledge support and obtained an undertaking from the project that appropriate signage will be procured to remedy the situation on all premises.</td>
<td></td>
</tr>
<tr>
<td>UK11</td>
<td>Xa</td>
<td></td>
<td></td>
<td>Differing interpretation of overheads</td>
<td>The approach to overheads was agreed with the Directorate and has since been tightened up as a result of clearer national guidance.</td>
<td></td>
</tr>
<tr>
<td>UK12</td>
<td>X</td>
<td></td>
<td></td>
<td>Xb Further clarification required on depreciation.</td>
<td>Information on the methodology used to calculate depreciation has been checked and found satisfactory. This material has been supplied to the ECA for examination although it was available at the time of audit.</td>
<td></td>
</tr>
<tr>
<td>UK13</td>
<td>X</td>
<td></td>
<td></td>
<td>although previous article 10 inspections have been satisfied with the audit trail for claims it is accepted that the system operated by TWI did not entirely satisfy the requirement actual defrayal.</td>
<td>Corrective action is being taken and the project is looking at previous claims as well as overhauling their payment and claim process.</td>
<td></td>
</tr>
</tbody>
</table>

UK07 X 20–22 Failure to follow departmental guidance
UK08 X 8–12 Interval between assurance visits may exceed three years
UK09 X 15–17 A risk that some LCP traders may not assign goods to a customs approved treatment within prescribed time limits
UK10 X Accept that the old premises did not acknowledge support prominently.
UK11 Xa Differing interpretation of overheads.
UK12 X Although previous article 10 inspections have been satisfied with the audit trail for claims it is accepted that the system operated by TWI did not entirely satisfy the requirement actual defrayal.
UK13 X See above
| UK 14 | X | Do not agree because the actions were taken in conjunction with the offer letter which is a legally binding document. The variation in intervention rates does not represent advance payments and is in line with the Commission’s letter of November 2003 and regulation 1260/99. | Currently in discussion with the ECA. |
| UK 15 | X | No account is taken of the integrated nature of the projects and the need to take a reasonable pragmatic view that all costs should be assigned to one of the projects. | It is admitted that “small” amounts of time may have been spent on non-ERDF projects. However, in the absence of time reporting, it is impossible to assess what “small” means. Further material and discussions are ongoing with the ECA. |
| UK 16 | X | The claim was in respect of retrospective salary costs and was therefore unusually high. | Discussing with the ECA. |
| UK 17 | X | Full breakdowns of the claims were provided to the ECA but due to a clerical error did not match directly the amount shown on the transactions listings. | The beneficiary since the start of the scheme refined systems and have checks and balances in place to minimise such clerical errors as transaction duplication. The situation should not occur again in the future. |
| UK 18 | X | Observation accepted, but further evidence supplied to the ECA. | Audit division has withdrawn its findings following the additional evidence provided. |
| UK 19 | X | Unsure about the ECA conclusions. | In discussion with the ECA. |
| UK 20 | X | The Commissioning authority believes that the tendering process was sufficiently robust. | Unsuccessful bidders were directly informed by letters of rejection and because of the timescale involved a notice that the contract had been let was not issued. |
| UK 21 | X | Differing interpretation of “in kind expenditure”. | Further material supplied to the ECA and discussions in progress. |
| UK 22 | X | Accepted that records were not complete. | Additional material supplied to ECA and discussions in progress. |
| UK 23 | Xa | Overheads conclusion accepted. | Corrective action being undertaken and ECA informed. Discussions ongoing with the ECA. |
| UK 23 | Xb | Grant rate ineligibility not accepted because of the ability to vary grant rate so long as ultimately the contracted rate set out in the offer letter is delivered. | Discussions ongoing with the ECA. |
| UK 24 | X | Comments accepted, detailed article 10 proceedings to be implemented in the next quarter. | Additional material being supplied to the ECA and corrective action being undertaken. |
| UK 25 | X | Comments accepted, detailed article 10 proceedings to be implemented in the next quarter. | Additional material being supplied to the ECA and corrective action being undertaken. |
| UK 26 | X | Corrective actions being undertaken. | Discussions continue with ECA and other audit organisations. |
| UK 27 | X | Fundamental disagreement with the ECA as to what constitutes open and competitive tendering. All arrangements for ESF comply with the relevant Statutory Instruments relating to procurement. | |
UK28 X Contrary to the ECA view, audit trail documentation did exist, and were sent subsequently to the ECA.

UK29 X Contrary to the ECA view, audit trail documentation did exist, and were sent subsequently to the ECA.

UK30 X Fundamental disagreement with the ECA as to what constitutes open and competitive tendering. All arrangements for ESF comply with the relevant Statutory Instruments relating to procurement. Since tendering had been carried out correctly, and therefore contract costs could be used, there was no need to justify real costs.

UK31 X Contrary to the ECA view, audit trail documentation did exist, and were sent subsequently to the ECA.

UK32 X A very confused finding. The project concerned was not subject to tender, and therefore used real costs, for which there was an audit trail.

UK33 X Fundamental disagreement with the ECA as to what constitutes open and competitive tendering. All arrangements for ESF comply with the relevant Statutory Instruments relating to procurement.

UK34 X The Commission explanatory note allows flat rates to be used as real costs, and there is no requirement to prove that they are lower than real costs—the ECA is simply wrong.

UK35 X The Commission explanatory note allows flat rates to be used as real costs, and there is no requirement to prove that they are lower than real costs—the ECA is simply wrong.

UK36 X Article 4 checks had been carried out, but the ECA chose to ignore the evidence in the form of article 4 reports that were produced.

UK37 X A fundamental misunderstanding of the system of match funding used in England. Match funded provision and beneficiaries are identified at the start of projects, and not at the end, as asserted by the ECA.

UK38 X Fundamental disagreement with the ECA as to what constitutes open and competitive tendering. All arrangements for ESF comply with the relevant Statutory Instruments relating to procurement. Since tendering had been carried out correctly, and therefore contract costs could be used, there was no need to justify real costs.
UK39  X  The use of flat rates was specifically allowed in a letter from the Commission DG Employment to the England ESF Managing Authority.

UK40  X  This flows from the other findings that are disputed, and is therefore also disputed.

UK41  X  A complete misunderstanding of the way in which match funding is identified. There was evidence relating to match funded projects and beneficiaries.

UK42  X  Missing documentation  Yes. Following the audit 80 sheep were removed from the 2004 claim with appropriate penalties applied.

UK43  X  Over-declaration of land  Yes. Following the over-declaration appropriate adjustments were made to the claim.

UK44  X  Over-declaration of land.

UK45  X  The UK authorities accept a category of data was not included in the risk process, however as was demonstrated during the audit the net effect of the omission had no material impact upon the risk selection. Yes. The risk process has been corrected analysis.

UK46  Unfortunately, a reply from the UK was overlooked. The UK Rural Payments Agency's Counter Fraud and Compliance Unit are now preparing a reply and this will be sent to the Court as soon as possible.
**Table 3:**

Please indicate any general comments you have concerning the 2005 Annual Report or general issues relating to the discharge procedure.

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**Sections 6.16 to 6.21**

The UK Department for Communities and Local Government, as the Managing Authority, has been working very closely with the Government Offices who have day to day responsibility for managing ERDF, to ensure that the necessary steps are taken to satisfy the ECA and the Commission’s concerns, especially on issues which would have been identified during an Article 4 monitoring check. For instance, supplementary guidance was produced in October 2005 in agreement with the Commission to meet the recommendations set out in various Audit reports, which all regions now follow.

Substantial work is also underway to pick up the number of projects to be subjected to detailed monitoring visits, ensuring an even spread across all years of the programme. This action will help to address the concerns about the eligibility of expenditure being declared and the retention of prime documentation.

Where monitoring activity has already taken place Government Offices are reviewing the content to ensure it meets the standard set out in the new monitoring framework.

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**Chapter 8**

With regards to the Court’s review of TACIS nuclear safety interventions in the Russian Federation (RF) and Ukraine (excluding the Chernobyl Nuclear Power Plant (NPP)). A similar review took place in 2000. The Court comments on the nuclear programme relate to: the relatively low priority given to radioactive waste management; difficulty of measuring the TACIS contribution to improving safety at individual NPPs; lack of clarity concerning the role of Delegations in programming and implementation; project delays; procurement delays; problems with VAT exemption; insufficient participation at the central level. The Commission replies point to the need to work on jointly agreed priorities, the centralised management of the nuclear programme and the complexity of the work.

The Court concluded that since 2000 the Commission has made major improvements in the management of the programme. Further strengthening was recommended in: impact measurement; radioactive waste management; dissemination; increasing Delegation involvement, respecting contractual obligations, improving procurement. Commission replies were positive.

These views reinforce our own experience. Nuclear safety is an issue as important to the EU as it is to the CIS, whereas other topics such as institutional reform have a lower profile. But, introducing safety culture change in the CIS is a long process, exacerbated in this case by a history of underinvestment and the inevitable security sensitivities around the nuclear industry.

On DG ECHO, the main issue is the brief allusion to the Special Report on the Commission’s response to the Tsunami (8.11) and the Commission’s reply that it will address the Court’s concerns appropriately. The Special Report recommends that DG ECHO’s monitoring reports should focus more on checking project activities than on results achieved. The Commission is right to respond (to the Special report) that it does adequately cover project activities; it is very important that DG ECHO should, like other donors, focus on humanitarian impact. The report notes that DG ECHO experts were not able to say which specific UN project activities were funded by DG ECHO as opposed to other donors. Another principle of Good Humanitarian Donorship is reduced or more flexible earmarking, and there is an increasing tendency towards pooling humanitarian funding (with common reporting); we think that DG ECHO should be encouraged to be more flexible rather than less.

On the Western Balkans (ie CARDS), the only reference is to the decentralisation of management of funds to national implementing agencies in Croatia and Albania without the assessment of these agencies’ capacity required by the Financial Regulation. On Croatia, the Commission argues that it acted in line with the Financial Regulation in force, coupled with a subsequent Commission decision providing the legal framework for decentralisation. The projects in Croatia have also been managed without problems. On Albania, the Commission claims to have carried out a visit to assess capacity. In the end the Delegation took back management responsibilities.
The UK fully supports decentralising the management of funds to national authorities—this is an essential part of preparing the Western Balkans countries for accession. But we recognise that this needs to be according to the regulations set out, and in line with the capacity of the relevant authorities, which can vary widely from country to country. The UK supports the Commission’s attempts to build this capacity through CARDS and then the new Instrument for Pre-Accession.

Chapter 9

The Court’s audit of the Phare and Turkey programmes tested transactions under central and under decentralised management and evaluated co-financing agreements. The Court’s review of ISPA included an examination of EDIS for Bulgaria and Romania and its review of Sapard included an examination of 5 projects in Bulgaria and Romania. The Court’s 2006 audit of Phare investment projects in Bulgaria and Romania in 2000 concluded that the audited projects were generally in line with Phare objectives and were physically in place. However, over half the projects assets were not, or were only partially, being used for the intended purpose. These shortcomings resulted from weak administrative capacity and a lack of national resources in Bulgaria and Romania.

Overall the Court’s 2005 Annual report concluded that the transactions audited were not materially affected by error except for those under Sapard. The Commission acknowledged that there was an issue with Romania. The Court recommended: closer monitoring, clearer procedures, more clarity on co-financing, and for Sapard in both Romania and Bulgaria closer following of the accredited procedures. The Commission responded positively and put across the message that they regularly remind countries of their obligations to stick to the rules.

These conclusions reinforce the earlier 2006 audit and Phare/ISPA/Sapard Management Committee reports which regularly highlight the tension between the large programmes to help Bulgaria and Romania meet the accession timetable and their capacity to effectively implement them alongside the ongoing govt funded improvements.

EDF

The ECA have once again (12th year running) certified the accounts of EDF. The UK welcomes the Commission’s sensible responses to the findings of the 2005 audit, notes with approval that many of the recommendations in the ECA’s findings are already the subject of Commission corrective action and further notes with approval Commission’s continuing follow up of corrective actions identified in earlier reports.

General

The UK welcomes the ECA report and has the following general comments to make:

While the UK agrees with the need for greater propriety on EC expenditure it agrees with the Commission’s comments on the need to change the single transaction audit methodology employed by the ECA when applying it to the multi-annual European programmes. Until a more appropriate methodology is found there will continue to be errors found and no recognition of any corrective action taken, as the single transaction audit is time limited.

Another point is that the differing interpretations of regulations by the DGs, the ECA and OLAF make conformity to the regulations an almost impossible task. Neither do they help in the simplification of regulations and therefore the likelihood of the ECA giving an overall positive assurance of the accounts or enhance the attraction of entering into a contract of confidence.

Slightly more detailed comments are:

The UK will continue to work with the Commission and the ECA to improve the systems with relevance to proportionate action.

— The ECA 2005 Audit Report highlights deficiencies in the reporting of Irregularities and suggests that the European Commission is not following its own Regulations in respect of the imposition of financial corrections and also suggests that an increased level of checking is required of the day to day transactions. This causes concern in the UK as it may result in a disproportionate response by the European Commission.
The UK is concerned with the continued variation in interpretation of the Regulations by each successive audit mission which have cast aside previously agreed control methods. This is causing an unnecessary burden on the delivery bodies who are continually having to adapt their systems to the ever changing requirements of the auditors.

Changes to the interpretation of the Regulations are now being made far too late in the operational delivery of the programmes. The UK does not see any reason to carry out additional and even retrospective work to provide ever-increasing levels of assurance as a result of changes in the interpretation of the Regulations. Satisfying these additional requirements will require additional resources as the current delivery methods are already stretched managing the current programmes and designing and implementing the 2007–13 programmes.

There appears to a lack of coordination in the timing of various audit missions to the UK. This has been promised in the past, however it is not evident in the UK and in Scotland there have been three audit missions running simultaneously.

The new Regulations embrace the principle of proportionality. The UK sees as a key principle that will determine our roles and responsibilities in respect of our delivery of the new programmes. Once the roles and responsibilities have been agreed with the Commission this should be the benchmark against which we are judged. We require to ensure that the ECA are in agreement with this position.

Links to the 2004 Summary Report
The Report from the Commission—Member States’ replies to the Court of Auditors’ 2004 Annual Report (COM(2006) 184 final of 20 April 2006) is available on the web-site of the Commission in all official languages:


The accompanying Commission staff working document is available on the web-site of the Commission in English only:

MODERNISING THE EUROPEAN COMMISSIONS ACCOUNTING SYSTEM (11399/06)

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

Thank you very much for your Explanatory Memorandum 11399/06. This was considered by Sub-Committee A at their meeting on 17 October. The Sub-Committee have decided to hold the document under scrutiny until their inquiry into European financial management is debated on the floor of the House.

We were particularly interested to see that you are “hopeful” that the transition to full accruals accounting will lead to an unqualified Statement of Assurance from the European Court of Auditors in their next annual report (paragraph 19 of your Explanatory Memorandum). While we agree that the transition to accruals accounting is indeed an important aspect of proper financial management we consider that there are many other obstacles to an unqualified Statement of Assurance which also need to be addressed. Do you agree?

16 November 2006

Letter from Ed Balls MP to the Chairman

Thank you for your letter of 16 November 2006.

I am responding to Sub-Committee A’s comments when they considered this document at their meeting on 17 October 2006.

As you know, the annual Statement of Assurance on the EU budget, required under Article 248(1) of the Treaty to be provided annually by the European Court of Auditors (ECA), is in two parts: it covers the reliability of the accounts; and the legality and regularity of the underlying transactions. I am indeed hopeful that the Commission’s move to full accruals accounting in 2005 will, in due course, allow the ECA to give an unqualified opinion on the reliability of the accounts. However, I agree with you that there are still many other obstacles to be overcome before the ECA can give an unqualified assurance on the legality and regularity of the underlying transactions.

I welcome the recent report from Sub-Committee A on these issues (“Financial Management and Fraud in the European Union”). In response to the report, I gave a Statement to the House of Commons on 20 November (Official Report, 13WS), and I will respond to the recommendations in more detail later.

24 November 2006

MUTUAL ASSISTANCE BETWEEN THE ADMINISTRATIVE AUTHORITIES OF MEMBER STATES (5048/07)

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

Thank you for your Explanatory Memorandum which Sub-Committee A considered at its meeting on 20 February. The Committee decided to hold the document under scrutiny and would be grateful if you could provide further information on the Commission’s response to your concerns as negotiations progress.

The Committee would also be interested to know what level of data sharing already occurs between Member States’ Customs authorities, and the effectiveness of this and of other measures in place on the basis of Regulation (EC) No 515/97. Information on the amount of revenue that is thought to be lost to operations that are in breach of customs and agricultural legislation would also be of interest.

21 February 2007

Letter from Rt Hon Dawn Primorolo MP to the Chairman

Thank you for your letter of 21 February seeking further information about use of the current Regulation 515. I am sorry for the delay in responding.

We had expected substantive negotiations on the proposed amendment to Regulation 515 to be underway by now. However, following a general introduction of the subject at a Customs Union Group meeting in February, it has not been tabled for discussion. We now expect that a detailed Article by Article examination is unlikely to begin before late May. I shall keep you informed of progress in negotiations.

The Committee asked some specific questions about current customs mutual administrative assistance between Member States. Member States’ Customs Authorities share data with each other under a variety of arrangements, including several covered by Regulation 515, for areas falling within Community competence.

Unfortunately, HM Revenue and Customs’ records of mutual assistance requests do not distinguish totals of requests made and received under Regulation 515 from other types of request; but they advise that the 515 total will be several hundred requests per year. A range of mutual administrative assistance requests is covered by the Regulation, including many requests for verification of information such as invoiced values and country of origin for goods.

It is important for Member States’ Customs Authorities to be able to assist each other, and Regulation 515 allows them to do so in a range of ways, spontaneously or on request. It also provides a legal base for some joint operations between Member States, and Commission led mutual assistance initiatives with third countries’ Customs Authorities.

Members States’ Customs Services do not routinely advise each other of the results of mutual assistance requests, and there is no readily available reliable estimate of actual or prevented revenue losses for customs and agricultural regimes. The European Commission’s anti-fraud office (OLAF), keeps statistics about fraud against the Community Budget as a whole, but does not publish a suitable customs/agriculture breakdown.

27 March 2007

PASSENGER CAR RELATED TAXES (11067/05)

Letter from John Healey MP, Financial Secretary, HM Treasury to the Chairman

You wrote to the Paymaster General on 20 December 2005, informing her that the above document remains under scrutiny and asking to be kept informed of any further developments. The Austrian and Finnish Presidencies chose not to discuss the dossier, but negotiations have resumed under the German Presidency. I am pleased to provide you with an update on the progress of these negotiations.

The German Presidency intends to hold an informal discussion at ECOFIN on 8 May, with the aim of getting a political steer for future work in this area. To prepare for this discussion, it held one Working Group meeting.

The proposal has three elements: abolition of registration taxes, inclusion of a CO₂ element in the tax base, and a scheme to enable tax to be refunded when a resident of one Member State moves permanently to another. The German Presidency has gone some way to recognising the subsidiarity concerns of many Member States by proposing to postpone consideration of the abolition of registration taxes. Instead, it suggests that work should focus on the refund scheme and the CO₂ element.

The Government’s position has not changed since the Paymaster General’s letter to you of 8 November 2005. There is nothing to prevent Member States from choosing to base their car taxes on CO₂ if they so wish. Therefore the proposal adds little value. Furthermore, the Stern review highlighted the importance of maintaining flexibility in the use of policy measures to tackle climate change, particularly to keep the costs of mitigation manageable.

I will continue to keep you informed of developments on this dossier.

30 April 2007

SHAREHOLDERS VOTING RIGHTS (5217/06)

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

Further to Jim Fitzpatrick’s letter of 21 September 2006, I should like to inform you that the European Policy Committe has approved a consultative document on the above proposal.

The Secretary of State shall be informing Parliament of the publication of the document later this week. Copies of it will be placed in the House libraries and will be available on the DTI website. In addition, my Department will be holding a public meeting on 14 November.

23 October 2006

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

Thank you very much for your letter dated 21 September 2006 regarding EM 5217/06 which Sub-Committee A considered at their meeting on 24 October. The Committee have decided to continue to hold the document under scrutiny.

The Committee remains in favour of the proposed Directive and welcomes the general thrust of the Proposal to improve corporate governance in the Union.

We welcome the progress that you have reported with regard to the ability of Member States to take further measures to facilitate the exercise by shareholders of the rights referred to in the Directive. We also appreciate the information about the legal base.

On notice periods for general meetings, we were pleased to hear that the Government’s position is attracting support, and that the European Parliament rapporteurs have proposed amendments in favour of differentiation. We wish to ensure that these are included in future drafts and so would be grateful for details of the Commission’s future proposals in this area.

On the right to ask and have answered all questions at company meetings we are glad to see that you have reached a compromise, which we also support. We would like to be kept updated on negotiations.

On the proposal to impose more stringent national requirements we note that the text now refers to “measures to facilitate the exercise by shareholders of the rights referred to in this Directive”. We do not consider that would necessarily give Member States the right to impose more stringent national requirements and would appreciate your analysis of this.

We look forward to receiving details of the outcome of the public consultation and public meeting which you refer to. As requested in my earlier correspondence, we would also appreciate details of the stakeholder consultation you referred to in your original Explanatory Memorandum.

24 October 2006

Letter from Rt Hon Ian McCartney MP to the Chairman

Thank you for your letter of 24 October to Margaret Hodge, about EM 5217/06. I am replying as this matter falls within my portfolio.

I should like to answer the points your committee raised, update you on the progress of negotiations on this directive and request scrutiny clearance for EM 5217/06.

Notice Periods for Meetings

The Commission’s are still inclined to retain the 21 day notice period for all meetings. Nevertheless, there remains support among some member states for differentiation. Both European Parliament Committees’ (ECON and JURI) consideration of this directive has been delayed, and they are continuing to consider amendments which propose differentiation in meeting notice periods between AGMs and EGMs. The UK continues to support these.

“More Stringent” National Requirements

In negotiating this Article, we considered it important to establish what “more stringent requirements” meant in the context of the rights referred to in the rest of the directive. This is because we wished to ensure that this Article was not used by Member States to impose requirements which had the effect of restricting shareholder rights. We believe that the agreed text “measures to facilitate the exercise by shareholders of the rights referred to” ensures that Member States are only able to use the directive to improve, rather than restrict, shareholder rights.

Periods Between Meeting Notice and Record Date

This is a further issue which requires resolution to our satisfaction. The latest Presidency compromise in Article 7 permits Member States to set a minimum six day period between the date of the meeting notice and the record date. This is an improvement on earlier drafts, where no minimum period was set, but we do not believe that this minimum period is long enough. It does not allow sufficient time for shares on “loan” to be

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recalled in order for them to be voted; this is good practice in terms of corporate governance and it is particularly important to allow sufficient time in cross-border situations. Unfortunately we are fairly isolated on this issue in the Council; nevertheless there remains support for a longer period in amendments being put before the European Parliament Committees, and we are hopeful that a longer period can be achieved through political agreement.

PUBLIC CONSULTATION

This was issued on 26 October following clearance from your committee. The public consultation meeting took place on 14 November. We are in the process of producing a summary of the meeting, but the overall view of those present was to support the main negotiating objectives of the Department.

PROGRESS OF NEGOTIATIONS AND REQUEST FOR SCRUTINY CLEARANCE

It is possible, but unlikely, that this dossier will be on the agenda of the Competitive Council to reach a common position on 5 December. Discussions in the European Parliament Committees are continuing and the European Parliament will not consider this in plenary session until the new year. In these circumstances I should be most grateful for your committee’s scrutiny clearance of this dossier. There are still two issues (differential notice periods between AGMs and EGMs, and a longer minimum period between the meeting notice and the record date) where we continue to request improvements to the directive. We should be grateful for the ability to negotiate these improvements with your committee’s support. We have requested clearance from the Commons’ Committee in the same terms.

30 November 2006

Letter from the Chairman to Rt Hon Ian McCartney MP

Thank you very much for your letters dated 30 November and 3 February regarding EM 5217/06. I welcome the news in your latest letter that agreement has now been reached at COREPER. In your letter of 30 November you referred to the public consultation that your department had carried out. Sub-Committee A would be grateful if you could send a copy of the summary of the public consultation meeting when it is produced.

8 February 2007

TAXATION SYSTEMS AND CUSTOMS IN THE COMMUNITY (9500/06, 9609/06)

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

Thank you for your letter of 18 July 2006, following consideration by Sub-Committee A on the proposals for both Fiscalis and Customs 2013, confirming scrutiny clearance. I am pleased to provide information on the legal base relating to tax legislation as well as more specific detail about the use of Article 95 for the programmes in question.

Article 93 of the Treaty provides a specific legal basis for the harmonisation of indirect tax provisions to ensure the establishment and functioning of the internal market. Decisions are by unanimity. There is no corresponding legal basis in the field of direct tax. Article 94 of the EC Treaty provides “for the approximation of such provisions laid down by law, regulation or administrative action in the Member States as directly affect the establishment or functioning of the Common Market” but it does not provide a legal basis to propose harmonisation of direct taxes as an end in itself. Decisions under Article 94 are by unanimity.

By way of derogation from Article 94, Article 95 (the proposed legal base for Customs and Fiscalis 2013) provides for a range of approximation measures to be adopted by QMV. However, Article 95 does not apply to fiscal provisions, which according to recently settled ECJ case law covers not just the setting of tax rates and bases, but also procedural rules with a potential impact on tax rates and bases.

The Government therefore considers that proposals on administrative co-operation in the field of taxation based on Article 95 need to be looked at with particular care to ensure consistency with this case law, a view shared by the Council Secretariat Legal Services. The Government will therefore approach the negotiations of Customs and Fiscalis 2013 with that principle firmly in mind.

I hope you find this helpful.

11 Refers to letter addressed to M Connarty, Chairman of Commons European Scrutiny Committee.
4 October 2006

Letter from Rt Hon Dawn Primarolo MP to the Chairman

This proposal was cleared by the European Scrutiny Committee on 11th October 2006 and by the European Union Select Committee on 18 July 2006. I am now writing to both Committees to advise that agreement was reached through informal contacts between the Council, the European Parliament and the Commission to secure acceptance of this dossier at first reading.

The proposal was examined by the Council Customs Union Group. In the discussions amendment was secured to Article 1 to make it clear that this was a 1st Pillar Programme. This addressed concerns expressed by the European Scrutiny Committee, that Customs 2013 would not be restricted to the 1st Pillar.

Other amendments agreed during the first reading were mainly minor changes to the drafting, although the European Parliament put forward amendments to ensure greater transparency in the budget process. These had our full support.

25 January 2007

TRADE DEFENCE INSTRUMENTS IN A CHANGING GLOBAL ECONOMY (16702/06)

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

Thank you for your Explanatory Memorandum which was considered by Sub-Committee A at their meeting on 30 January. The Sub-Committee cleared the document from scrutiny, but asked that they might receive a copy of the Government’s formal reply to the consultation paper when this is sent to the Committee in March.

2 February 2007

TURNOVER TAXES: HARMONISATION OF THE LAWS OF MEMBER STATES (13390/06)

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

Thank you very much for your Explanatory Memorandum 13390/06. It was considered by Sub-Committee A at their meeting on 24 October 2006. Whilst we understand the pressures imposed by the short deadlines in the decision making process we would have appreciated more time to consider the document in order to make a full and constructive contribution. Nevertheless we have decided to hold the document under scrutiny pending clarification of a few issues.

We would like to know why the Proposal only covers these specific types of goods: this will encourage fraudsters to concentrate on other products. Furthermore why is this derogation not to be extended to cover other Member States since both you and the Commission appear to consider this to be an effective way to combat VAT fraud across the EU. Is this a temporary measure pending Council agreement on Community-wide measures to combat this fraud? If so, will its effectiveness be measured and used to evaluate the proposals for a permanent system?

We would be grateful for the full Regulatory Impact Assessment and your estimate of the costs involved for UK business from the change to the reverse charging system.

24 October 2006

Letter from Rt Hon Dawn Primarolo MP to the Chairman

Thank you for considering Explanatory Memorandum 13390/06 at your meeting on 24 October 2006. I hope that this response clarifies those further issues outlined in your letter of that date.

You asked why the Proposal only covers these specific types of goods: Small electronic goods are those most frequently used by fraudsters to commit carousel fraud. Almost 90% by value of carousel fraud is perpetrated using mobile telephones and computer chips. The Proposal is targeted, to maximise the impact on the fraud without undermining the overall integrity of the VAT system. It would also be difficult for fraudsters to show the legitimacy of a move into a very different product or market for reasons other than to perpetrate the fraud.

You also asked why this derogation is not to be extended to cover other Member States. It is possible that other Member States may indeed apply for such a derogation but this would be very much a matter for them. I can confirm there is already considerable discussion in the EU over other solutions to combat VAT fraud, which is ongoing. The UK’s derogation for a targeted reverse charge will have a very significant impact on
MTIC fraud losses in the short to medium term, and will run alongside discussions on EU wide measures to tackle the fraud.

The measure is time limited, as are most derogations, and the UK’s experiences of the effectiveness of the reverse charge will inform these further discussions. Indeed, the UK is required to produce a report for the Commission and other Member States within two years.

A full Regulatory Impact Assessment will be available once the derogation is approved and implemented into UK legislation and practice.

I hope you find this information helpful.

7 November 2006

Letter from the Chairman to Rt Hon Dawn Primarolo MP

Thank you for your letter of 7 November regarding EM 13390/06. This was considered by Sub-Committee A at their meeting of 28 November. As you are aware, the Sub-Committee is currently conducting an inquiry into Missing Trader Intra-Community Fraud and the Sub-Committee decided to continue to hold this item under scrutiny in conjunction with the inquiry.

We are aware that the Government is continuing work to seek a derogation on this issue and we do not want our inquiry to unduly delay this action. The Sub-Committee have therefore asked me to invite you to give evidence to their inquiry at your earliest convenience.

29 November 2006

Letter from Rt Hon Dawn Primarolo MP to the Chairman

As you are aware, in September 2006 the Commission issued a Proposal allowing the UK to introduce a targeted reverse charge to combat VAT fraud, as referred to in my letter and EM of 12 October 2006.

I am pleased to inform you that the Proposal received political approval at Council earlier today.

I appreciate that the Proposal has yet to clear the scrutiny process due to its inclusion in the House of Lords Inquiry into Missing Trader Fraud. I hope you can understand the importance of this Proposal to the Government, and as such we had to agree it before it cleared scrutiny. Although regrettable I hope you will understand this was unavoidable in the circumstances.

19 March 2007

VAT ARRANGEMENTS APPLICABLE TO RADIO AND TELEVISION BROADCASTING SERVICES (9405/06, 15428/06)

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

I wrote to you on 15 June 2006, following the outcome of the June ECOFIN. I had previously submitted an Explanatory Memorandum (EM 9405/06) concerning a Commission Proposal to extend Directive 2002/38/EC, which concerns the VAT treatment of radio and television broadcasting services and certain electronically supplied services. In my letter I explained that the Government had agreed in principle to a limited extension of Directive 2002/38/EC for a period of six months.

This was because technical work on the Proposals to simplify VAT obligations (EM 14248/04) was to continue under the Finnish Presidency. In addition, although technical work on the Proposal on the place of supply of services (EM 5051/04 and 11439/05) was more or less concluded, all these issues were to return to Council towards the end of this year.

Technical work on the Proposals to simplify VAT obligations has indeed carried on under the Finnish Presidency. You will recall this is a package of VAT simplification measures designed to ease the burden of VAT compliance, primarily for businesses involved in cross-border trade. The package as a whole consists of Proposals for two Council Directives and a Council Regulation (which covers the administrative arrangements for the two Directives).

The Finnish Presidency has held a series of Working Group meetings on the package and has made good progress on the Directive on the refund procedure. But much more still remains to be done on the other Directive, particularly in respect of the proposed electronic One Stop Scheme.

The Finnish Presidency is returning all these issues to ECOFIN on 28 November. As more remains to be done, the Presidency intends giving a progress report and setting out the work for next year. In the meantime, the provisions in Directive 2002/38/EC, which prevent non-EU businesses from being able to provide certain services VAT free to EU consumers, expire on 31 December 2006. The Presidency will therefore ask Member States to agree in principle to extend those arrangements once again. However, although I also understand that the Commission has prepared the necessary proposal, it has yet to emerge. The aim of the Presidency will therefore be to reach agreement to the general approach at ECOFIN and adopt the Directive in another Council before the end of this year.

I have therefore attached an Explanatory Memorandum (15428/06, *not printed*), on the basis of text not yet received. I expect the content of the Proposal to be broadly similar to the last time round, and once again, it will not be necessary for any changes to be made to UK legislation.

I hope you find this helpful.

22 November 2006

Letter from Rt Hon Dawn Primarolo MP to the Chairman

I wrote to you on 22 November 2006, attaching an Explanatory Memorandum (15428/06) on a Commission Proposal to extend Directive 2002/38/EC, which concerns the VAT treatment of radio and television broadcasting services and certain electronically supplied services. I also provided you with an update on technical work on Proposals to simplify VAT obligations (Explanatory Memorandum 14248/04).

This is a package of VAT simplification measures designed to ease the burden of VAT compliance, primarily for businesses involved in cross-border trade. It is made up of Proposals for two Council Directives and one supporting Council Regulation. One Directive covers reform of the existing cross-border refund procedure. The other would introduce a range of simplification measures, including an electronic One Stop Scheme and a proposal to give Member States more flexibility in setting National Registration Thresholds.

You will recall that although good progress had been made on the Proposal to reform the existing cross-border refund procedure, much more remained to be done on other aspects of the package, particularly in respect of the proposed One Stop Scheme. That was reflected in the Finnish Presidency progress report provided to ECOFIN on 28 November. The conclusion at ECOFIN was that the work should continue to be a Council priority and that the dossier would return to ECOFIN in June 2007.

When I wrote to you on 4 May 2006, I mentioned that the Austrian Presidency would raise the possibility of splitting this dossier into its two component Directives. This was because work on reform of the existing cross-border refund procedure was rather more advanced than other elements of the package. Although the split approach has yet to be agreed, it still remains a possibility. The Government would not object to it, as it would potentially enable reform of the cross-border refund procedure to be agreed and go ahead separately and to a slightly quicker timescale. Work on the other simplification measures would then continue in slower time.

It remains to be seen exactly how the German Presidency will approach the work. It has scheduled a first meeting on the dossier under its Presidency for 14 February. I will keep you informed of any significant developments.

19 February 2007

VAT FRAUD

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

Please find attached an Explanatory Memorandum (not printed) concerning a recent Commission Proposal allowing the UK to introduce a targeted reverse charge to combat VAT fraud.

This proposal represents an important development in our fight against VAT fraud and the Commission’s agreement to our derogation request is welcome. The Proposal was received on 29 September 2006 and I am urging the Finnish Presidency to progress this as quickly as possible. I appreciate that this does not allow a great deal of time for the scrutiny process but I hope you will understand the importance of being able to introduce this measure into UK legislation at the earliest opportunity. Our estimate is that the Proposal may go to ECOFIN on 7 November as an I/A point.

I am aware that there is very little time before ECOFIN, and you should be aware therefore that the Government may be asked to agree this proposal before it has cleared scrutiny. Although regrettable I hope you will understand this is unavoidable in the circumstances.

12 October 2006
VAT ON POSTAL SERVICES (9060/03, 11388/04)

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

I am writing to let you know the current status of this European Commission Proposal, as Cabinet Office have noted that it is some two years since I last did so.\(^{14}\)

You will be aware that in 2003 the Commission proposed the removal of the exemption for services provided by the “public postal services” (Royal Mail in the UK), and that a reduced rate of no less than 5% be made available for certain letterbox services, regardless of provider. In the EM 11388/04 COM (2004) 468 (10 August 2004) and my previous letters to you on this proposal, I have made clear that the Government is opposed to VAT on stamps—and therefore to the Commission proposal as it stands, and that we would make this clear in any negotiations on this proposal.

While there were Council Working Groups to discuss this Proposal in 2004, there was no consensus or agreement among Member States and there has been no move from successive EU Presidencies to continue discussions since that time. Negotiations on the Proposal remain stalled for the moment. There are no indications that time will be found for it either under the current Finnish Presidency or that of the Germans, which follows early next year.

However, the Commission has also recently written separately to the UK, Sweden and Germany about the scope of the present mandatory exemption for supplies made by the public postal services—in particular the exemption for services other than those necessary for the discharge of the universal service obligation, or where special terms and conditions are offered to customers. We are confident that the UK’s current application of exemption to all postal services provided by the public postal service is correct in law, and have replied to the Commission to this effect.

You may also wish to be aware that there has been a request for a judicial review by a domestic mail operator in relation to a number of VAT issues, including the scope of the exemption. We have yet to receive a date on when this application will be heard.

Meanwhile, the Government remains in regular contact with stakeholders, including postal operators and the independent regulator (Postcomm), to assess any interaction between the VAT rules and the development of competition and the continued delivery of the universal postal service.

25 October 2006

Letter from the Chairman to Rt Hon Dawn Primarolo MP

Thank you for your letter dated 25 October regarding EM 9060/03. This was considered by Sub-Committee A at their meeting of 7 November. The Committee have previously cleared this document from scrutiny, but decided to continue to hold under scrutiny the amended proposal outlined in EM 11338/04.

The Committee continues to support the Government’s opposition to removing the current exemption from VAT for public postal services. The Committee would like to be kept informed as to future progress in the negotiations on the outcome of the Commission’s enquiry into the scope of the present exemption, and on the progress and outcome of the judicial review requested on VAT issues.

16 November 2006

\(^{14}\) Correspondence with Ministers, 10th Report of Session 2003–04, HP Paper 71, pp 40–44.
Internal Market (Sub-Committee B)

ACCOMPLISHMENT OF THE INTERNAL MARKET FOR POSTAL SERVICES (14357/06)

Letter from the Chairman to Jim Fitzpatrick MP, Minister for Employment Relations and Postal Services/Minister for London

Sub-Committee B considered this document, and your Explanatory Memorandum, at its meeting on 4 December 2006.

As you may recall, Sub-Committee B published a report in 2000 entitled: *The Further Liberalisation of Community Postal Services*. In our report, we were clear that “Further liberalisation is both desirable and unavoidable because it introduces competition. Competition is needed in order to improve services and efficiency.” This remains our view.

We welcome the proposal to complete the internal market in postal services by 2009, and share the Commission’s concern that such a date should not slip. We would be grateful if you could keep us informed of any progress in negotiations in this area.

We are content to lift scrutiny at this stage.

6 December 2006

Letter from Jim Fitzpatrick MP to the Chairman

Thank you for your letter of 6 December, about the proposed Directive for the full accomplishment of the internal market of Community postal services.

I am pleased to note that the Select Committee remains of the view that liberalisation of the postal sector is both desirable and necessary, as the introduction of competition is needed to improve services and efficiency. That is the Government’s view, and we will be working together with like-minded Member States to fully support the Commission’s proposal.

I will look forward to keeping you informed of progress in negotiations, which are expected to start in earnest during the forthcoming German Presidency of the Council during the first half of 2007.

22 December 2006

AIR TRAFFIC MANAGEMENT SYSTEM, SESAR (15143/05)

Letter from Gillian Merron MP, Parliamentary Under Secretary of State, Department for Transport to the Chairman

I am writing to you to bring your Committee up to date with developments on the draft Regulation establishing the SESAR Joint Undertaking.

You will recall that I wrote, in June, to inform you that the Transport Council had reached a General Approach on the text of the draft Regulation. The UK supported the General Approach as we had managed to secure a number of improvements to the text, in particular concerning the role of Eurocontrol and the need to address concerns over the conflict of interest that could have arisen from Eurocontrol being both a contractor and the contract manager for SESAR’s research and development activities. A new provision on the avoidance of conflicts of interest had been added to the Statutes of the Joint Undertaking together with a requirement for Eurocontrol’s role to be defined in a formal agreement. This agreement will specify Eurocontrol’s tasks and responsibilities in the implementation of the ATM Master Plan under the authority of the Joint Undertaking.

The European Parliament’s Committee on Industry, Research and Energy, in consultation with the Committee on Transport and Tourism, has considered the Commission’s proposal and suggested a number of amendments. The Parliament’s amendments fall into three main areas: clarification of roles and responsibilities; avoidance of conflicts of interest and strengthening the role of the European Parliament. We support many of the proposals Parliament is putting forward, in particular the need to specify Eurocontrol’s

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tasks and responsibilities within a formal agreement and the introduction of specific provisions to address
concerns over the conflict of interest that could have arisen from Eurocontrol being both a contractor and the
contract manager for SESAR’s research and development activities. These are welcome additions and echo
similar changes that have already been incorporated into the General Approach text reached by Council.
However, we are concerned that Parliament’s proposal to remove the possibility of a reduced subscription (€5
million instead of €10 million) for members that subscribe to the Joint Undertaking within 12 months of its
formation could damage the business case for industry to become members of the Joint Undertaking.
Similarly, we believe that Parliament’s proposals to give itself an active role in the decision-making process of
the Joint Undertaking would be unnecessarily bureaucratic. The Administrative Board should have the
necessary decision-making powers to ensure the effective operation of the Joint Undertaking. However, even
if adopted by the European Parliament, it is unlikely that these amendments will be accepted by Council. The
draft Regulation is not subject to co-decision.

Parliament is expected to adopt its final opinion on these amendments at its plenary session on 14 November
2006. The Finnish Presidency has indicated that, following the vote in the European Parliament, it will look
to finalise this dossier as soon as possible, perhaps as early as the December Transport Council.
8 November 2006

Letter from the Chairman to Gillian Merron MP

Thank you for your letter of 8 November 2006, Sub-Committee B considered your letter at its meeting on
27 November.

We were grateful to you for your update on the Joint Undertaking, following the report of the European
Parliament Industry, Research and Energy Committee, which we understand was adopted by the Parliament
on 14 November.

We share your misgivings over those amendments from the Parliament which relate to the members’
subscription fee in the first 12 months and for the greater role of the Parliament in the Joint Undertaking’s
decision making process.

We are reassured by your view that Council is likely to reject these amendments, and understand that the draft
Regulation will indeed be included on the agenda for agreement at the Transport Council Meeting on
11 December.

As our major concerns over the role of Eurocontrol have been addressed, we are content to lift scrutiny ahead
of this Council Meeting.
29 November 2006

Letter from Gillian Merron MP to the Chairman

Further to my letter of 8 November bringing your Committee up to date with developments on the draft
Regulation establishing the SESAR Joint Undertaking ahead of the European Parliament’s (EP) debate on
it, I am writing to update you further now the debate has taken place.

The EP in Plenary Session on 14 November gave a positive Opinion on the amendments to the Regulation put
forward by its Committee on Industry, Research and Energy, in consultation with the Committee on
Transport and Tourism, and this Opinion has been delivered to the Council.

My previous letter set out in detail our view on the EP’s proposed amendments. I also explained that because
this Regulation is subject to the consultation rather than co-decision procedure the Council is not obliged to
accept all the amendments. The amendments have now been considered by the Transport Working Group and
the adopted amendments do not substantively alter the General Approach text reached by Ministers at the
June Transport Council. You will particularly wish to note that the two amendments which gave us concern
(the EP proposals to remove the possibility of a reduced subscription for members subscribing to the Joint
Undertaking within 12 months of its formation, and to give itself an active role in the decision-making process of the Joint Undertaking) have not been adopted by the Council. The Regulation has now appeared on the preliminary Agenda of the December Transport Council for “political agreement”.

1 December 2006

Letter from the Chairman to Gillian Merron MP

Thank you for your letter of 1 December 2006, Sub-Committee B considered your letter at its meeting on 11 December.

We were grateful to you for confirming that the Transport Council will not adopt either of the European Parliament’s amendments which were of concern. As you will be aware, we cleared this document from scrutiny in my letter to you of 29 November.

12 December 2006

AIR TRANSPORT SERVICES (11829/06)

Letter from the Chairman to Gillian Merron MP, Parliamentary Under Secretary of State for Transport, Department for Transport

Sub-Committee B considered this document, and your Explanatory Memorandum, at its meeting on 9 October 2006.

We support the Government’s effort to protect the interests of UK airlines and industry. However these interests should not be protected at the expense of public safety, especially in view of accidents that occurred in recent years. In your view, how practically significant is the issue of wet-leasing for UK airlines? Which airlines are covered and in aggregate how important is it?

It appears from paragraph 20 of your Explanatory Memorandum that the Government have reservations over the Commission’s proposals on pricing, aimed at addressing the perceived “lack of consistency in the publication of taxes”. As this would appear to us to be an entirely reasonable approach, what are the Government’s reservations?

We look forward to receiving the results of your consultation, when they are available. We will maintain scrutiny on this proposal at this stage.

10 October 2006

AIRPORTS (5886/07, 5887/07)

Letter from the Chairman to Gillian Merron MP, Parliamentary Under Secretary of State for Transport, Department for Transport

Sub-Committee B considered these documents, and your Explanatory Memoranda, at its meeting on 5 March 2007.

We are in favour of action in the areas identified by the Commission, but we share your concern that the draft Directive “may not target regulation effectively at monopoly power”, but add an unnecessary additional layer of regulation to airports where competition is already functioning well. We agree that the proposed threshold is arbitrary, and would be grateful to you if you could set out an alternative threshold which might better reflect the market position of the airports. We would also like to receive the results of the Government’s consultation, when they are available.

We will maintain scrutiny on the draft Directive.

We note your “initial concerns” over the possible follow up actions to the Communication on airport capacity. We will return to the issue when the expected detailed proposals for action emerge from the Commission, but are content to lift scrutiny on the Communication at this stage.

7 March 2007
AVIATION IN THE EU GREENHOUSE GAS EMISSIONS TRADING SCHEME (5154/07)

Letter from the Chairman to Ian Pearson MP, Minister of State for Climate Change and the Environment, Department for Environment, Food and Rural Affairs

Sub-Committee B considered this document, and your Explanatory Memorandum, at its meeting on 19 February.

As you will be aware, we conducted an inquiry into the Commission’s Communication, Reducing the Climate Change Impact of Aviation. We published our report, Including Aviation in the EU Emissions Trading Scheme, in February 2006. As you might also be aware, this report is due to be debated on the floor of the House on Thursday 8 March. We would expect a copy of the Government’s Regulatory Impact Assessment before this date.

We will maintain scrutiny on the proposal at this stage.

26 February 2007

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

Thank you for your letter of 26 February 2007 to Ian Pearson on the above mentioned Explanatory Memorandum and the forthcoming debate in the House of Lords on your Committee’s report Including Aviation in the EU Emissions Trading Scheme. You requested that we submit a Regulatory Impact Assessment (RIA) ahead of the debate.

Unfortunately we are unable to provide an RIA in time for the forthcoming debate. The UK is still assessing the Commission proposals, and more work on the RIA is required in particular. However we will shortly be launching a public consultation on the dossier, by which time we will have further analysis to support a RIA. Defra and the Department for Transport will of course submit the RIA under cover of a Supplementary Explanatory Memorandum as soon as it becomes available.

It is unfortunate that the timing of the debate means that it has not been possible for this work to be completed beforehand, however I would be happy to cover these issues in the course of the debate so far as I can at this stage.

8 March 2007

Letter from the Chairman to Gillian Merron MP, Parliamentary Under Secretary of State for Transport, Department for Transport

Thank you for your Explanatory Memorandum dated 26 January 2007 which Sub-Committee B considered at its meeting on 23 April 2007.

The Committee has firmly supported the inclusion of aviation in the EU ETS and we welcome the Commission’s proposals in this respect as well as the Government’s initiatives in the context of its White Paper on the Future of Air Transport. We hope that the UK will continue showing the leadership it demonstrated with its initiatives for reducing the climate change impact of aviation during the period that it held the Presidency of the EU Council.

We would welcome clarification from you on your concerns over the inclusion in the scheme of both departing as well as arriving flights. What is the legal basis for including flights originating from outside the EU; how will their emissions be measured; and how will the scheme be enforced on these flights?

We will continue to maintain scrutiny on the Commission’s draft Directive at this stage.

24 April 2007

INTERNAL MARKET (SUB-COMMITTEE B) 61

BUILDING A GLOBAL CARBON MARKET (15585/06)

Letter from the Chairman to Ian Pearson MP, Minister of State for Climate Change and the Environment, Department for Environment, Food and Rural Affairs

Sub-Committee B considered this document, and your Explanatory Memorandum, at its meeting on 8 January 2007.

As you may be aware from our recent report, Including the Aviation Sector in the European Union Emissions Trading Scheme, we share your support for the extension of the ETS to aviation. We note from your EM that the Government considers that the Commission’s analysis of the possible inclusion of surface transport “did not cover options that the UK feels merit further consideration”. Could you clarify which options the UK would like to see explored?

We are content to lift scrutiny on this document, and will await the legislative proposals which you anticipate.
9 January 2007

Letter from Ian Pearson MP to the Chairman

In your letter of 9 January 2007 you asked about the potential inclusion of surface transport in the EU Emissions Trading Scheme (EU ETS). As explained in the UK Climate Change Programme 2006, the inclusion of surface transport in CO₂ emissions trading mechanisms could be a way of delivering low cost carbon reductions. There are however a number of issues that need to be addressed before a decision were to be taken, including the route for implementation, the potential impact on EU ETS carbon price and where the emissions reductions will take place.

The European Commission’s review of the EU ETS provides an opportunity for these issues to be considered further and the Government would like to see that this opportunity is not lost. The European Commission tasked ECOFYS to support it in developing the scope of the review of the EU ETS and published a paper alongside the Commission’s communication “Building a global carbon market”. While the ECOFYS paper briefly touched on the down stream option of trading between individual emitters (vehicle owners) and at the mid-stream level with trading between manufacturers, these options were ruled out due to difficulties over the ability to monitor and verify emissions and administration costs.

The Government believes that another option that also merits consideration is that of upstream trading focusing on the fuel producers. You will be aware that the EU ETS directive lists transport as one of the sectors that should be considered when assessing whether to expand the scheme. We therefore feel that it is appropriate for the Commission to kick-start a serious debate now around this subject and for further work to be carried out as part of this process.

22 January 2007

Letter from the Chairman to Ian Pearson MP

Thank you for your letter of 22 January 2007, replying to my letter of 9 January. Sub-Committee B considered your letter at its meeting on 19 February.

We were grateful to you for clarifying the options which the Government would like to see included in the Commission’s review of the EU Emission’s Trading Scheme. We share your hope that this provides a “kick-start” to a serious debate on the scheme, which in our view is much needed.

We would be further grateful if you could expand on the Government’s plan for upstream trading for fuel producers; and how this would be related to reducing carbon emissions.

26 February 2007

BUILDING THE ERA OF KNOWLEDGE FOR GROWTH (8156/05)

Letter from Malcolm Wicks MP, Minister of State for Science and Innovation, Department of Trade and Industry to the Chairman

On 31 August 2005 Lord Sainsbury wrote to your Committee concerning points which had been raised during the scrutiny process on the above European Commission document. On 26 October, following a meeting on 24 October, the Committee replied, welcoming points he had made in this letter.

While your letter raised no additional issues specifically relating to this document, your Committee said that it would keep the proposal under scrutiny because of its close links with the negotiation of the Seventh Framework Programme for Research and Development, going on concurrently and about which the Committee was in the process of asking for further information.

This information was provided and indeed all the documentation relating directly to these negotiations was cleared from scrutiny some time ago.

We would be grateful to know what further information is required on this proposal since it does not appear to have been formally cleared along with the other material relating to the Framework Programme negotiations.

23 April 2007

CIVIL AVIATION SECURITY (12588/05)

Letter from Gillian Merron MP, Parliamentary Under Secretary of State, Department for Transport to the Chairman

Thank you for your letter of 25 July 2006 regarding the proposed EC Regulation on civil aviation security. This issue has been given increased priority by the Presidency following the recent aviation security alert at mid August, with a number of discussions at Working Group, most recently on 2 October. I am writing to update you on progress ahead of the 12 October Transport Council, where it is hoped a Political Agreement can be reached on the text.

I will deal first with the most contentious issue, the funding of transport security measures. You will be aware from my Explanatory Memorandum (EM) 12168/06 of 5 September that the Commission published a paper on this subject on 1 August. As I pointed out in the EM, this paper makes no recommendations for state funding of security, but does draw three broad conclusions:

— financing mechanisms for transport security are lacking in transparency;
— as funding mechanisms vary, there may be distortion of competition both within the Community (particularly where more stringent measures are concerned) and internationally (particularly in respect of the US); and
— State monies used to fund transport security do not constitute state aid.

The European Parliament has not, as far as I am aware, commented on the paper, but MEPS have continued discussions with the Commission and the Finnish Presidency on the funding amendments they themselves proposed to the draft Regulation at First Reading. At one point it was hoped that a compromise between the Council and the European Parliament might be found by removing provisions on funding from the operative part of the text and adding a reference to the possibility of state payments and/or further Commission study in the non-binding preambles. This arrangement remains an option, but MEPS appear not yet ready to agree to it and are thought unlikely to do so at Second Reading. This means that funding provisions will almost certainly be a subject for negotiation during Conciliation under the forthcoming German Presidency.

Three issues are of particular concern to MEPS:

— transparency;
— shared funding (involving a state contribution) of baseline measures; and
— Member State funding of more stringent measures (that is, any requirements in addition to those set out in EC legislation).

The UK remains opposed to any requirement for state funding. We believe that a significant number of other Member States will support this approach.

Having reached an impasse on funding, the Finnish Presidency has elected to defer discussions with the Parliament on any of the other outstanding points. I am therefore unable to provide a further update at this stage on any progress with the UK’s concerns over the Parliament’s other amendments. These, too, are likely to be considered as part of the Conciliation dialogue. The UK is, however, content with proposed Presidency text, with one probably minor concern—the implications of the new comitology rules as detailed below. The Presidency has removed from the latest version of the proposal all references to the European Air Safety Agency; all other safety/security confusions; the objectionable Commission proposal for an approval process for more stringent measures; and the over-generous exemptions for mail transported by air. The Commission has raised no objections to any elements of the Presidency text.

As regards the new comitology rules, we have only recently become aware of their implications for the aviation security proposal—indeed, the proposal is one of the first to be affected by Council Decision 512/06, which introduced the new Regulatory Procedure with Scrutiny (RPWS) provisions. The Council’s common position is likely to be that the new procedure, which gives MEPs the right to block certain implementing legislation, should be applied to Articles 4(3) (derogations) and 9a (quality control programmes) of the draft proposal. We are content with the application of the new procedure to Article 9a, which is not likely to prove controversial and should not require urgent amendment. We are less sure that its application to Article 4(3) is acceptable, although the urgency procedure which allows legislation to be introduced subject to later Parliamentary comment within a limited timeframe, has been included. This is because of a concern that detailed and security sensitive rules on derogations might subsequently become public knowledge, through the publication of an amending Annex. We are likely to be discussing this further, and exploring possible alternatives, with our European partners in the period before the Council.

You will also wish to be aware of recent developments in relation to the application of the Regulation to Gibraltar. In mid September, the UK, Spain and Government of Gibraltar concluded an agreement, which inter alia, covers the development of Gibraltar airport as the regional airport for that area. This agreement replaces the 1987 agreement, which never came into force, and will result in all the EC legislative provisions on aviation, including security, to be applicable to Gibraltar. At present, the UK and Spain are agreeing a form of words to replace the relevant articles in this Regulation; it is hoped that this will be finalised before the next Transport Council meeting.

Finally, I would like to give you some further information about a related issue; the recent agreement on an urgent amendment to implementing Regulation 622/03. This proposal, considered under the comitology Regulatory Procedure, was the subject of an unnumbered EM laid before Parliament on 25 September and put to the vote in the comitology Committee on 27 September. The proposal was designed to address the threat to aviation from liquid explosives, which came to the fore during the recent security alert at UK airports. The amending Regulation was agreed by a QMV vote, winning support from a large majority of Member States, and, with the exception of new requirements on hand luggage dimensions, is expected to come into force in November. The hand luggage specifications will apply as from early next year.

I hope that you find this helpful. I will write again in due course to inform you about progress made at the October Transport Council and at the European Parliament’s Second Reading.

4 October 2006

Letter from the Chairman to Gillian Merron MP

Thank you for your letter of 4 October 2006, replying to my letter of 25 July. Sub-Committee B considered your letter at its meeting on 9 October.

We note that the issue provoking most controversy, the funding of transport security, has been largely removed from the text of the proposed Regulation and that discussions on the issue will be deferred until a later point. We would of course be grateful to you for an update as these discussions progress.

At the time of writing, we have not yet had the opportunity to consider the further Explanatory Memorandum, which your letter mentions. This letter will now be considered at our next meeting on 16 October, and we will respond to it as quickly as possible.

We recognise the urgency of this Regulation in the current security climate, and are content to lift scrutiny ahead of the Transport Council on 12 October. We look forward to receiving a report from you following the Council meeting.

We note your concern over the application of the new comitology rules to this proposal; are there any other current transport proposals which to your knowledge may be similarly affected?

10 October 2006

Letter from the Chairman to Gillian Merron MP

Sub-Committee B considered your Explanatory Memorandum at its Meeting on 16 October 2006.

We much appreciate your drawing this to the Committee’s attention and although it was unfortunate that we could not consider the draft Regulation before its agreement on 27 September, we quite understand the reasons for this. We recognise the need for urgent action following the alleged terror plot in August, and the requirement for the detail of these measures to remain secret.
We understand from your letter of 4 October that negotiations on funding provisions, which had been a source of great disagreement thus far, will continue under the German Presidency in the first half of 2007, and would be grateful if you kept us informed of any further developments.

We are content to lift scrutiny on this document.

17 October 2006

Letter from Gillian Merron MP to the Chairman

Thank you for your letters of 10 and 17 October. I am writing to provide you with an update on progress on the two aviation security legislative proposals concerned; the proposed implementing Regulation, which was the subject of my unnumbered EM, laid before the House on 26 September, and the proposed framework Regulation, the subject, most recently, of my letter of 4 October.

The new implementing Regulation, containing provisions to address the threat from liquid explosives, was agreed by the comitology procedure on 27 September and entered into force in the European Community on 6 November as Regulation 1546/06. The Regulation introduces measures which, in the wake of the August security alert here in the UK, limit quantities of liquids which can be carried by passengers through the central search point and require passengers to remove laptops from bags and take off their coats before screening. It also limits the size of bag allowed to be used for hand luggage, although this will not become a legal requirement in other Member States until May 2007. The Government has adjusted most requirements at UK airports to mirror those set out in the Regulation, although passengers here are still limited to a single piece of hand luggage and hand search ratios remain higher than elsewhere in the Community. The Regulation will be subject to a review six months after the date of adoption, in particular to take into account research currently being carried out in relation to the detection of liquid explosives.

As regards the proposed new aviation security framework Regulation, the subject of my Explanatory Memorandum 12588/05, progress has been much slower. The most significant development is that the October Transport Council reached a political agreement on a text which we would have no difficulty in accepting. In particular, this text contained no references to the funding issue which has proved so contentious and limited the application of the new regulatory procedure to derogations and the adjustment of quality control processes, as set out in my letter of 4 October. The requirements covering derogations are perhaps not ideal, but they do allow for the application of the urgency procedure, thus ensuring that Parliamentary consideration will not preclude urgent action. A reference to the Ministerial Statement on Gibraltar Airport, agreed in Cordoba on 18 September, has also been incorporated into the text. This means that the new Regulation would in due course also apply to Gibraltar.

Since the Council meeting, the Finnish Presidency has engaged very actively with Members of the European Parliament, and especially with the leader of the Transport and Tourism Committee, in an effort to pave the way for agreement at Second Reading. The Council Working Group and the Commission have also been extensively involved in this process. The Presidency suggested to MEPs that, while Member States were firmly of the opinion that funding provisions should not be specified in a technical Regulation, it would be possible to gain their agreement to an Article—rather than just a preamble as previously proposed—on transparency, while the Commission accepted that it could agree to undertake further research on the whole subject of transport security financing. These offers were apparently insufficient to secure MEPs’ support in advance of the Second Reading and we remain reasonably convinced that there will be no resolution before a Conciliation stage under the German Presidency. The Second Reading is likely to take place early in the New Year and will reveal whether MEPs also wish to pursue possible amendments in other areas. They have made no specific references as yet to the provisions covering the use of the regulatory procedure with scrutiny.

In your letter of 10 October, you also asked for details of other transport measures to which the new scrutiny procedure will apply. In fact, it applies to all proposals for legislation adopted after 23 July 2006, which already include numerous examples in the transport field. None of these, however, are of the extremely sensitive nature of the proposed new aviation security measures. As regards extent legislation, the Council, Parliament and Commission have agreed that 25 existing measures will be adjusted (as appropriate) to the new procedures as a matter of urgency. These do not include any transport proposals, but the Commission has also informed the Parliament that it will examine all other co-decision acts currently in force and, if necessary, adopt measures adapting them to the new procedures by the end of 2007. These are likely to include some legislative acts relating to transport, but no details are yet available. We will pay close attention, in particular, to any changes proposed for security legislation.

Finally, as background information to all the above, you may also wish to be aware of a current challenge to the Community legislative system, the so-called “Heinrich case”. This concerns an action brought by an Austrian man who was refused permission to take tennis rackets into an aircraft cabin, as screeners considered
that they fell into the category of “prohibited article”. The list of prohibited articles is included in the Annex to Regulation 622/03, which is classified and not publicly available, although there is a separate requirement for airports to display the list at check in counters and elsewhere. All other elements of the Annex are only available to security professionals and others on a strict need-to-know basis. Mr Heinrich is challenging the Commission’s right to classify, and therefore not publish, legislation, claiming that this is contrary to the provisions of the Treaty. Legal advice is that the case is not clear cut and Member States have been invited to submit comments. The UK intends to do so.

I hope that this is helpful. I will continue to keep you updated on progress with the important proposal for a new framework Regulation and, if you so wish, on any developments in respect of implementing Regulation 1546/06.

15 December 2006

Letter from the Chairman to Gillian Merron MP

Thank you for your letter of 15 December. Sub-Committee B considered your letter at its meeting on 8 January 2007.

We were grateful to you for updating the Committee on the progress of both important Regulations. We continue to support the need for urgent action in this sensitive area, and are concerned at the slow progress on the framework Regulation. We would of course be grateful to receive an update from you following the European Parliament’s second reading.

You write that, regarding the Heinrich case, the legal argument over the Commission’s right to classify its legislative provisions is “not clear cut”. We would be grateful to you for a summary of the Government’s comments on the issue, should they be submitted as you expect.

9 January 2007

COMPETITION IN THE EUROPEAN GAS AND ELECTRICITY SECTORS (5236/07)

Letter from the Chairman to Lord Truscott, Parliamentary Under Secretary of State for Energy, Department of Trade and Industry

Sub-Committee B considered this document, and your Explanatory Memorandum, at its meeting on 19 February.

We note the fundamental deficiencies in market structure identified by the report as obstructing the completion of the internal market in energy. We support fully the Commission’s willingness to tackle these deficiencies through both competition and regulatory remedies, and welcome your support of the Commission on the issue.

We are content to lift scrutiny on the document.

26 February 2007

COMPETITIVENESS COUNCIL, FEBRUARY 2007

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

I am writing to provide information on the Competitiveness Council in Brussels on 19 February 2007. Michael Glos, German Federal Minister of Economics and Technologies will chair the Council.

There will be a presentation by the Commission followed by an exchange of views, which will be in public. The Council will discuss the Commission’s proposal that the Spring European Council endorse a 25% target for reducing administrative burdens from EU legislation, as well as the scope for similar action covering national law in the member states. Improving the EU regulatory framework is a priority for the Presidency and, as such, it will wish to secure an agreement on administrative burdens reduction which will produce real benefits for business. The UK supports this.

The next item on the agenda is on the Commission’s Communication on a Competitive Automotive Regulatory Framework for the 21st Century (CARS 21). There will be a presentation from the Commission followed by an exchange of views. The UK is keen to ensure that an integrated approach is taken to the automotive sector and will be making this point at the Council.
There will follow an agenda item on the Lisbon Economic Reform process and, specifically, the contribution of the Competitiveness Council to the Spring European Council (the “Key Issues Paper”). There will be a presentation from the Commission on its 2006 Annual Progress Report, an orientation debate, and adoption of the Key Issues Paper. The Key Issues Paper covers five broad areas—the Single Market, Better Regulation, Research and Innovation, Unlocking business potential, and External trade policy. It is in line with UK priorities for the Competitiveness Council.

Four items will be taken under Any Other Business:

3. Proposal for a Directive on the exercise of voting rights by shareholders of companies having their registered office in a Member State and whose shares are admitted to trading on a regular market (Information from the Presidency on the state of play).
4. Internal Market Scoreboard (Information from the Commission).

There will be a lunchtime discussion item on “Competitiveness, Climate Change, and Secure Energy Supply”. Securing EU agreement for action to tackle climate change is a key priority for the UK. The UK welcomes the discussion of this topic at the Competitiveness Council.

14 February 2007

COMPETITIVE AUTOMOTIVE REGULATORY FRAMEWORK (5746/07)

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

Sub-Committee B considered this document, and your Explanatory Memorandum, at its meeting on 16 April 2007.

We share your general support for the goals stated in this document. However we continue to share the Government’s opposition to the inclusion of fiscal incentives in the Directive on passenger car tax, which we are scrutinising separately. Similarly we are also writing to the Secretary of State for Transport on the issue of the proposed reductions on carbon dioxide emissions.

The Commission’s Communication notes the high level of research and development spending in the EU car industry. What steps will the Government be taking to ensure that this expertise is consulted on the proposals as they are taken forward? We note the reduction in NOx and particulate matter emissions of 70–90% since the adoption of the first Euro emission limit standards: could you provide us with a precise timescale for the period when these reductions were achieved? We would also be grateful to you if you could inform us of the proportion of total car emissions that NOx and particulate matter are estimated to comprise.

We are content to lift scrutiny.

19 April 2007

DRIVING LICENCES (15820/03)

Letter from Stephen Ladyman MP, Minister of State for Transport, Department for Transport to the Chairman

I am writing to update your Committee on the progress of the above legislative proposal.

You may recollect that I wrote to you on 13 June 20057 giving a comprehensive account of where matters then stood.

Since then, a Council common position was adopted on 18 September 2006, and the European Parliament completed its second reading on 14 December 2006, with no further amendments, except to introduce the new “regulatory with scrutiny” comitology procedure, giving the European Parliament a voice in relation to any future amendments which may be proposed by the European Commission to the Annexes of the Directive.

7 Correspondence with Ministers, 45th Report of Session 2005–06. HL Paper 243, pp 119–120.
The measures become effective 20 days after publication in the OJ, giving Member States until January 2011 to transpose the new measures into national law, and until January 2013 to bring them into effect. A particular exception is that the obligation on Member States to withdraw all old-model driving licences and replace them with the new model requires this to be done by January 2033: however we think it likely that this action will be taken much earlier by the UK in order to improve and safeguard the security of the UK driver licensing system.

22 January 2007

Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter of 22 January 2007. Sub-Committee B considered your letter at its meeting on 5 February.

We were grateful to you for providing us with the final update on the Driving Licences Directive. We are pleased that a resolution satisfactory to all parties has been reached.

7 February 2007

ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES (11190/06)

Letter from the Chairman to Malcolm Wicks MP, Minister for Energy, Department of Trade and Industry

Sub-Committee B considered this document, and your Explanatory Memorandum, at its meeting on 9 October 2006.

We share your view that the Commission should “relect further on market developments” before removing markets from the regulatory framework as the patchy record of some National Regulatory Authorities across the EU might suggest serious consequences for competition.

Although this is not a legislative proposal in itself, we will maintain scrutiny on the documents as it contains many issues of potentially great importance to the Telecommunication sector. We would welcome the opportunity to hear from you in person, as well as from Ofcom, at a convenient point before the end of the year.

In the mean time, we trust that you will update us further should there be consideration of these recommendations scheduled for consideration in Council, and should legislative proposals be forthcoming we look forward to receiving your Department’s impact assessment.

10 October 2006

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

Thank you for your letter of 10 October, about the EM 11190/06.

I am very grateful for your timely consideration of the Explanatory Memorandum on the Commission’s ideas for the forthcoming review of the EU Regulatory Framework for Electronic Communications Networks and Services. Clearly, as your Report recognises, this is likely to be a significant initiative for future competition and innovation in this very important sector of the economy. It is important that we do not squander the gains in competition and consumer choice we have witnessed in Europe since the Framework was adopted in 2002.

I am grateful that you share my view that the Commission needs to think very carefully before removing retail markets from review by National Regulatory Authorities.

You may be interested to know that the Commission’s consultation on this Communication attracted over 300 responses, from a wide range of stakeholders.

I attach for your information our own response, which we submitted jointly with Ofcom. The consultation only closed on 27 October so the views of Member States and others, have not yet been made public. Indeed the issues will not be debated formally at the Telecommunication Council on which I am writing separately as the legislative proposals are now not expected until late January or February 2007.
In light of the revised timetable, I wonder if it might make more sense for your Committee to further consider these issues, perhaps as you suggest in an oral session after the legislative proposals are published in the New Year. I look forward to your views on this.

14 November 2006

Letter from the Chairman to Rt Hon Margaret Hodge MP

Thank you for your letter of 14 November 2006, which Sub-Committee B considered at its meeting on 27 November.

We were grateful to you for enclosing the Government’s joint submission to the Commission’s consultation on the Communication and reassured that you share our concerns over the Commission’s removal of markets from the EU regulatory framework.

We agree that the most appropriate time to take evidence from you would be in early 2007, when you expect legislative proposals, and look forward to hearing from you, as well as Ofcom, at that point.

As you might be aware, Sub-Committee B has just completed an inquiry into the Commission’s proposed Audiovisual Media Services Directive, and will publish our report in December.

As the Communication will not be discussed in Council, we are content to lift scrutiny on the document.

29 November 2006

END-OF-LIFE VEHICLES (5413/07)

Letter from the Chairman to Jim Fitzpatrick MP, Parliamentary Under Secretary of State for Employment Relations and Postal Service, Department of Trade and Industry

Sub-Committee B considered this document and your Explanatory Memorandum at its meeting on 26 February 2007.

We note the Commission’s recommendations. We would like to express our concern on how the 85% re-use and recycling target will be achieved by 2015 especially since there is no indication (or 2006 data until mid-2008) that the 80% target will be reached. We would like to be kept informed on the findings of the Stakeholder Working Group as well as your analysis of all available options. In the meantime the Committee will hold this document under scrutiny.

28 February 2007

ENERGY EFFICIENCY ACTION PLAN: REALISING THE POTENTIAL (14349/06)

Letter from the Chairman to Ian Pearson MP, Minister of State for Climate Change and the Environment, Department for Environment, Food and Rural Affairs

Sub-Committee considered this document, and your Explanatory Memorandum, at its meeting on 4 December 2006.

In our recent report on the Commissions’ Green Paper on Energy, we endorsed the Paper’s call for an energy efficiency Action Plan and welcomed “action to reduce the demand for energy” as a “vitaly important goal”.

This remains our view.

We agree that energy efficiency must play a central role in the current energy debate and welcome this Action Plan as an important first step in achieving this.

We are content to lift scrutiny on this proposal.

6 December 2006

ENERGY POLICY FOR EUROPE (5232/07, 5237/07, 5240/07, 5282/07, 5354/07, 5373/07, 5374/07, 5391/07)

Letter from the Chairman to Lord Truscott, Parliamentary Under Secretary of State for Energy, Department of Trade and Industry

Sub-Committee B considered these documents, together with your Explanatory Memoranda, at its meeting on 26 February 2007.
At the outset, we share your view that the Strategic Energy Review is broadly “positive for the UK” and are pleased to note that the Review reflects “informal UK discussions with the Commission”. We believe that the regular review of the EU’s energy policy will play a valuable role in ensuring that the policy continues to respond to the inevitable emerging and changing challenges which the EU will face in the years to come.

As you will be aware from our report of last year, The Commission’s Green Paper, “A European Strategy for Sustainable, Competitive and Secure Energy”, we are firmly of the view that action to unbundle distribution and supply is central to realising the internal market in energy. Such action would take the EU a significant way forward to achieving its three core energy objectives. We also endorsed the proposals for an EU-Strategic Energy Technology Plan and concluded that “developing an energy policy which is sufficiently flexible to allow the inclusion of key, low carbon technologies . . . is critical to delivering sustainability”.

However we do share some of your misgivings over the Commission’s recommendations contained in the related documents. We agree that, with the very different needs of 27 Member States, any targets must be flexible enough to allow the Member States to determine their own energy mix in the interests of both subsidiarity and efficiency. The Commission’s proposed mandatory targets on renewable energy sources might pose a threat to this, and we will monitor closely the legislative proposals which you expect at some point in 2007.

Similarly, we support our opposition to any moves by the Commission to advance proposals on nuclear security, which we believe should remain a matter for Member States. We were also disappointed that the review did little to take forward the idea of a more coherent external energy policy for Europe, which we strongly support.

We would welcome an update from you following the discussions of the review in the Spring European Council, particularly on whether there now appears to be consensus between Member States on the way forward. We are content to lift scrutiny on these documents.

28 February 2007

eSAFETY COMMUNICATION (12383/05, 15932/06)

Letter from Stephen Ladyman MP, Minister of State for Transport, Department for Transport to the Chairman

On 14 September the European Commission adopted the 2nd eSafety Communication, Bringing eCall to Citizens (COM (2005) 431 final). The Communication summarised the background to and rationale for Community Action to support and facilitate “the urgent and practical actions needed to roll-out eCall, the Pan-European in-vehicle emergency call”, and set out European Commission actions.

Our Explanatory Memorandum (EM12383/05), dated 10 October 2005, set out the Government’s view on the issue, i.e. that we should not sign the associated Memorandum of Understanding until we had undertaken our own review of the business case and the implications any subsequent deployment might have within the UK. As a result this EM was not cleared by your Committee, and sight of the outcome of the intended research was requested.

This research has taken longer than we initially expected, in order to ensure the widest coverage of stakeholder views, but the researchers have now reported and the results are being assessed. Their findings will help shape any final recommendations for action. Early in the New Year we will provide the Committee with a full report on the outcome of the review, and outline any further action that we will be taking.

19 December 2006

Letter from the Chairman to Stephen Ladyman MP

Sub-Committee B considered this document (15932/06), and your Explanatory Memorandum, at its meeting on 22 January 2007.

As we have noted on the first two eSafety Communications, we fully support the underlying objective of reducing road fatalities through the better use of eSafety technology and systems. We understand your desire to evaluate more fully the merits of each of the initiatives contained in “The 3rd eSafety Communication” in the context of other schemes already operational.

INTERNAL MARKET (SUB-COMMITTEE B)

We look forward to receiving the results of your analysis in the form of an update to the Committee, together with the partial Regulatory Impact Assessment, when they are both available.

We will maintain scrutiny on the document at this stage.

25 January 2007

EU SATELLITE CENTRE (EUSC)

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

I am writing to inform your Committee of a draft Council Joint Action (JA) to amend the JA which established the EU Satellite Centre (EUSC) in July 2001. The original JA, amended draft JA and an Explanatory Memorandum are attached. The General Affairs and External Relations Council (GAERC) is scheduled to agree the amended JA on 12 December 2006.

The role of the EUSC is to support the EU’s decision-making in the context of the Common Foreign and Security Policy and, in particular, the European Security and Defence Policy by providing satellite imagery and analysis. This year the Secretary General/High Representative (SG/HR) reviewed the activities of the EUSC and, in consultation with EU Member States, issued a series of practical recommendations which will improve the running of the Centre and serve to clarify its role. The Government fully supports the recommendations which will enable the EUSC to manage its budget better and improve co-ordination between the EUSC and other work in this area. The UK will therefore support adoption of the amended JA at the December GAERC.

27 November 2006

EURATOM: AGREEMENT ON INTER-INSTITUTIONAL CO-OPERATION IN THE FRAMEWORK OF INTERNATIONAL CONVENTIONS (9018/06)

Letter from the Chairman to Malcolm Wicks MP, Minister for Energy, Department of Trade and Industry

Thank you for your letter of 14 August 2006,9 replying to my letter of 25 July. Sub-Committee B considered your letter at its meeting on 9 October.

We were grateful to you for setting out the Government’s concerns over the above proposal, in addition to the potential conflicts with the principle of subsidiarity. You mention that you raised these concerns with other Member States; can you inform us of their reaction to your concerns?

We will continue to maintain scrutiny on the proposal and would be grateful for a report of any progress made so far under the Finnish Presidency.

10 October 2006

Letter from Malcolm Wicks MP to the Chairman

Thank you for your letter of 10 October, in which you ask for an update on the position of the above proposal. At the Council Working Group on Nuclear Questions meeting on 11 October the Presidency introduced a proposal for non-binding guidelines that received a positive reception from many, including Germany, France, the Netherlands, and Spain reflecting Member States’ positions. The Commission representative acknowledged that the proposal was consistent with the general climate and suggested that a written understanding would be beneficial. The Presidency confirmed its intention to progress this proposal.

On this basis, we expect the Commission will drop its proposal and accept the non-binding guidelines.

I am sure you will agree that this is a positive outcome that will allow for a more “joined up” approach on the part of Member States without our hands being tied.

26 October 2006

Letter from the Chairman to Lord Truscott, Parliamentary Under Secretary of State for Energy, Department of Trade and Industry

Thank you for your letter of 26 October 2006, replying to my letter of 10 October. Sub-Committee B considered your letter at its meeting on 27 November.

We are relieved that the inter-institutional agreement looks set to be based on non-binding guidelines, rather than the Commission’s original proposal. We congratulate the Government for the part you have played in achieving what we hope will be “a positive outcome”.

Nevertheless, we will maintain scrutiny on the proposal until the Commission formally abandons it and would be grateful to you for informing us of this should it occur.

30 November 2006

Letter from Lord Truscott to the Chairman

I am writing to update you on the proposal for a draft inter-institutional agreement EM 9018/06 on which there has already bee some correspondence with Sub-Committee B.

As indicated in earlier written updates, I can confirm that the inter-institutional agreement is now a set of non-binding guidelines on international conventions. These were issued by The Council of the European Union on 4 January 2007 following agreement between EU Member States at the Working Party on Atomic Questions on 13 December 2006. Determination of competence on future inter-institutional agreements will be dealt with on a case-by-case basis. I apologise for the delay in updating the Committee, which is due to an oversight.

29 March 2007

Letter from the Chairman to Lord Truscott

Thank you for your letter of 29 March 2007. Sub-Committee B considered your letter at its meeting on 23 April.

We were grateful to you for updating us on this agreement; and welcome the final decision to adopt non-binding guidelines. We are content to clear this document from scrutiny.

24 April 2007

EURATOM: SEVENTH FRAMEWORK PROGRAMME FOR NUCLEAR RESEARCH AND TRAINING ACTIVITIES (6185/05, 8087/05, 12727/05, 12729/05, 12730/05, 12731/05, 12732/05, 12734/05, 12736/05, 5057/06, 9981/06, 10233/06, 10234/06, 10235/06, 10237/06, 10238/06, 10239/06, 10240/06)

Letter from Malcolm Wicks MP, Minister of State for Science and Innovation, Department of Trade and Industry to the Chairman

Further to Lord Sainsbury’s letter of 27 July 200610 reporting the outcome of the Extraordinary Competitiveness Council on 24 July, I write to update your Committee on progress with the Seventh Framework Programme.

I am pleased to report that, following the positive outcome of the European Parliament session yesterday, it is very likely that final agreement can be reached on this dossier before the end of the year and that this important Community instrument will be fully operational from 1 January 2007.

It is the Presidency’s intention that Council will adopt the 11 pieces of legislation listed above at its meeting on 12 December. The final official texts will not be available until the end of next week and there will not be time for them to be scrutinised by your Committee before that meeting. I therefore enclose the working documents, the content of which will not change further. As you will see, although a number of minor changes have been made as a result of the European Parliament’s first reading/second reading/opinion yesterday, they do not change the substance of the decisions and the majority are fully consistent with the UK’s negotiating position and the Explanatory Memoranda already cleared by your Committee. Given the number of texts involved, I thought it would be useful to summarise the notable changes made in tabular form (see Annex A). As you know, all of the earlier texts were cleared by your Committee, except for EM 12732/05. As the issues raised at that time, regarding nuclear security and the Euratom budget to which Lord Sainsbury responded on 28 November 2005 have been resolved to the satisfaction of the UK and in light of the fact that the cleared

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EM 10239/06 is an amendment, we hope that your Committee is now able to lift its scrutiny reserve on EM 12732/05.

The Government is content with the 11 revised texts, which maintain UK priorities, and therefore we intend to take a favourable position on the entire FP7 “package” at the Council on 12 December.

4 December 2006

### Annex A

<table>
<thead>
<tr>
<th>Decision</th>
<th>Summary of notable changes*</th>
</tr>
</thead>
<tbody>
<tr>
<td>EC “Framework Programme”</td>
<td>Although no change is made to the total budget, very minor changes (typically €50 million or 0.1%) have been made to the distribution of the budget—increasing some of the thematic priorities (eg health, ICT, energy and security) primarily at the expense of research infrastructures. A presentational change is made to the title of the second thematic priority by adding the word “fisheries” (but no real change is made to the subsequent text).</td>
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<tr>
<td>(Annex 1)</td>
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<tr>
<td>Euratom “Framework Programme”</td>
<td>There is a minor revision in relation to nuclear fission limiting the role of the JRC on innovative fuel cycles to safety aspects. The main revisions to the text are the setting of a 60% reimbursement rate for indirect costs, a new annex laying down how the participant guarantee fund will operate and an increase from 50 to 75% in the reimbursement rate for certain types of security related research.</td>
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<tr>
<td>(Annex 2)</td>
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<tr>
<td>“Rules for Participation”</td>
<td>There are numerous technical revisions but none of major importance.</td>
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<td>(Annex 3)</td>
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<tr>
<td>Euratom “Rules for Participation”</td>
<td>Further clarity is provided with respect to the comitology arrangements for FP7—confirming that research involving human embryos and security research should be dealt with by a regulatory committee (**) and recognising the need for approval of projects by the Member States. Numerous minor additions are made to Annex 1—primarily to expand the level of detail in the areas of research listed (eg lists starting with the word “including”).</td>
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<tr>
<td>(Annex 4)</td>
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<tr>
<td>EC Specific Programme “Cooperation”</td>
<td>The amendments clarify the governance structure of the ERC by stating explicitly that the delivery agency will be established as an Executive Agency under Regulation No 58/2003. They explain the processes for appointing members of the Scientific Council and the term of office of Council members. Annex 1 contains wording which permits the Council to appoint a Secretary General to assist it in its collaboration with the delivery agency and monitor programme execution. Amendments clarify and expand the processes of the mid term review and state that this will examine the advantages and disadvantages of a structure established under Article 171 as compared with an Executive Agency model.</td>
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<tr>
<td>(Annex 5)</td>
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<tr>
<td>EC Specific Programme “Ideas”</td>
<td>The amendments make minor changes to the budget allocation (eg reducing the Infrastructures programme to €1.715 million from €1.850 million). Changes to Annex 1 stress the central role of Member States in the development and financing of infrastructures and underline the importance of improving access to and integration of existing infrastructures in Europe. They stress the primary role of the ESFRI Road map in setting priorities for the construction of new infrastructures and confine FP7 support to preparatory activities. There are also minor changes to the other elements of the specific programmes.</td>
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<tr>
<td>(Annex 6)</td>
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<tr>
<td>EC Specific Programmes “Capacities”</td>
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<td>(Annex 7)</td>
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</tbody>
</table>
**Decision**

**Summary of notable changes***

**EC Specific Programme “People”** (Annex 8)

Minor changes in Annex 1 underline the importance of encouraging research as a career, stressing the need to take gender and family issues into account and introducing additional flexibility into eligibility criteria to take account of career breaks. They also strengthen the provisions concerning the action to co-fund national mobility schemes which make it clear that this will be launched on a controlled scale to start with. They reinforce the stress on inter-sectoral mobility in the Industry Academia Partnerships and Pathways action.

**EC Specific Programme “JRC”** (Annex 9)

The revisions clarify that the JRC must maintain scientific excellence at European level; ensure accessibility (including for non-European researchers) whilst safeguarding financial integrity; be transparent in setting its research priorities; attempt to involve SMEs more; avoid overlapping and duplication of FP activities; and support development of risk assessment and management procedures in European decision making. More minor revisions concern specific support for the European Chemicals Agency when established and advising on an appropriate European energy mix, emissions measurement and conflict prevention.

**Euratom Specific Programme** (Annex 10)

Revisions indicate the need to guarantee the earliest possible training of nuclear scientists and engineers through joint training activities. Other amendments strengthen the focus of the Programme on safety and sustainability issues. Within the overall fusion budget at least €900 million will be reserved to non-ITER activities to ensure that there was adequate funding for an accompanying fusion research programme to be conducted in Member States including the UK.

**Euratom Specific Programme “JRC”** (Annex 11)

Other minor revisions seek to promote the JRC’s role in networking scientists, facilitating a European energy debate and preventing the loss of knowledge from the nuclear community.

* *Consequential changes made to the specific programmes as a result of changes to the high level Framework Programme are not recorded twice.

** The comitology arrangements in respect of research involving human embryos are repeated in all the EC Specific Programmes.

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**Letter from the Chairman to Malcolm Wicks MP**

Thank you for your letter dated 4 December 2006. Sub-Committee B considered your letter at its meeting on 11 December.

We were pleased to note that the outstanding issues surrounding nuclear safety and the Euratom budget have been settled “to the satisfaction of the UK” and are thus content to lift scrutiny on EM 12732/05.

We are keen that the Seventh Framework Programme is not prevented from operating as planned from 1 January 2007, and hope that the dossier will be agreed as expected in Council on 12 December.

12 December 2006

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**EUROPEAN AUDIOVISUAL SECTOR-MEDIA 2007**

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

I am writing to inform you that at the recent General Affairs Council on 12 February the Commission was granted the mandate to negotiate with Switzerland regarding the latter’s participation in the MEDIA 2007 funding programme.
Switzerland participated in the previous Community programmes, MEDIA Plus and MEDIA Training. These two programmes were subsumed into one programme to support the European audiovisual industry during the financial perspective of 2007–13; the MEDIA 2007 programme came into force on 1 January 2007.

Participation in MEDIA 2007 is open to European third countries party to the Convention of the Council of Europe on Transfrontier Television. Switzerland signed the Convention in 1989. The opening-up of the Programme to such European third countries is subject to prior examination as to the compatibility of their national legislation with the Community acquis, in both its internal and external dimensions.

Therefore, Switzerland will be required to provide the necessary guarantees concerning the convergence of their audiovisual policy with Community policy, both internally and externally.

The agreement will provide for the terms and conditions of Switzerland’s participation in the MEDIA 2007 and, in particular, its financial contribution to the programme budget. Switzerland must accept the Community rules concerning the financial contribution, including those concerning audits by Community authorities.

The negotiations on the Agreement are expected to be concluded quickly to allow Switzerland to be able to benefit from this programme at the earliest opportunity. The Agreement is expected to cover the period until the expiry of the MEDIA 2007 programme on 31 December 2013.

We will, of course, provide you with an Explanatory Memorandum setting out the content of the final Agreement prior to it being approved by Council.

8 March 2007

EUROPEAN AVIATION SAFETY AGENCY (14903/05)

Letter from Gillian Merron MP, Parliamentary Under Secretary of State, Department for Transport to the Chairman

I am writing to update you on the progress of negotiations on this dossier, which would extend the responsibilities of the EASA in order to extend its scope to cover rule-making and standardisation of flight operations and personnel licensing.

Since Karen Buck’s letter of 7 March 2006 and SEM and RIA of 8 March 2006 extensive negotiations have continued in the Aviation Working Group, most recently on 14 and 16 November. When the Commission’s proposals were published last December we had significant concerns, however the Agency’s performance has improved very significantly since then, and continues to do so. All the relevant technical issues with the proposal have now been satisfactorily resolved in the course of the negotiations. The Transport Council on 11 December will be invited to reach a general approach on the text, and I am content that UK should give its support to the proposal.

If I could now turn to the specific points originally raised in your letter of 18 January and the action the Government has taken to address them. Firstly, you raised concerns regarding the consistency of the extension of competencies of the Agency with the principle of subsidiarity. As I described in my previous letter the Government is content that the subsidiarity principle is being properly respected. Given the existence of a single European aviation market, which requires common rules, we do not believe that the establishment and application of these rules can be achieved apart from at the Community level. The implementation of these rules, however, will be undertaken by the national aviation authorities of the Member States.

In your letter you also referred to our concerns on the issue of attestations and medical certificates for cabin crew; and the provisions applying the basic principles and essential requirements to airlines and aircraft from third countries. In negotiations we have continued to address these issues, and in the case of cabin crew attestations have agreed that the measures to be adopted should not go further than those already agreed in Council Regulation 3922/91 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation (EU-OPS).

A consultation was issued by the Department on 20 January 2006, and closed on 21 April 2006. Representative organisations and stakeholders were made aware of the consultation by the Civil Aviation Authority (CAA) on behalf of the Department. It was also made available on the Department’s website. A total of 28 separate responses were received from a wide range of respondents. As part of the consultation process a stakeholder symposium was held which generated a significant level of interest.

In summary, many respondents expected medium to long term savings as costs fell due to economies of scale across the EU. They were also generally happy with the proposed operating provisions covering community carriers. Additionally, respondents felt that the provision of a pan-European Recreational Pilot’s Licence

would be beneficial, with the free movement this entails, as was the use of a General Practitioner for the medical certification of such a licence.

Full details of the consultation have been published on the Department’s website. The Department has worked closely with the CAA in the ongoing negotiation of this dossier at the European level, and has sought to incorporate the view of stakeholders where relevant.

I attach a Partial Regulatory Impact Assessment, updating the Initial Regulatory Impact Assessment that was submitted on 8 March. It is difficult at this stage to be any more precise about anticipated regulatory impacts as these will depend to a large extent on the final text of the regulation, and on the detailed Implementing Rules, which have yet to be written.

It will take some time for the legislative proposal to run its course—probably into late 2007 and beyond. Should there be deterioration in the Agency’s performance the UK would, of course, have further opportunities to express its views in Council before final adoption of the Regulation. The European Parliament has begun its consideration of this dossier and is currently expected to hold its Plenary First Reading in March 2007. I will, of course, keep you informed of the progress of the proposed Regulation.

28 November 2006

Annex A

PARTIAL REGULATORY IMPACT ASSESSMENT
Department for Transport

TITLE OF PROPOSAL

PURPOSE AND INTENDED EFFECT

OBJECTIVE
The main objective is to improve the level of aviation safety within the common market in air transport. The proposed Regulation seeks to achieve this by amending Regulation 1592/2002 to extend the EASA system to include air operations, pilot licensing and third-country aircraft in order to ensure a high, uniform level of safety. It also puts forward a number of amendments to the original EASA framework in light of experiences since 2002.

BACKGROUND
Established by Council Regulation (EC) No 1592/2002 of 15 July 2002, EASA began to carry out its statutory responsibilities on 28 September 2003. The original Regulation set out the basic principles and essential requirements in areas related to the certification of aeronautical products and appliances. Regulation 1592/2002 required the Commission to bring forward further proposals in due course to extend the scope of EASA which it has now done.

RATIONALE FOR COMMUNITY INTERVENTION
The UK Government, as part of its commitment to ensuring consistent and ever greater standards of safety in the Union, has supported the general objective of extending EASA’s scope on a measured, step-by-step basis. The proposal is now being discussed in the Council of the European Union.

CONSULTATION
An Initial RIA formed part of the Government’s consultation on this proposal and sought opinions from all parties, in particular those businesses, groups and individuals directly affected by the Regulation. The consultation closed on 21 April 2006 and we received 28 responses. This Partial RIA is based upon the answers to that consultation.
OPTIONS

As stated in the Initial RIA, there are three options, as follows:

(a) Accept in Full
   *Accept and support the text as it currently stands.*

(b) Consider Amendments to the Text
   *On the basis of consultation the Government may seek to develop the proposals on the basis of its reasoned opinion, as informed by the response received from interested parties.*

(c) Do Nothing
   *As this is a piece of Community legislation this option is not relevant in this context. It is in the United Kingdom’s best interests to formulate an opinion on these proposals.*

The proposals cover a large number of detailed amendments and additions to Regulation 1592/2002. As previously stated all were not acceptable as drafted to either the UK Government or other Member States, and amendments have been debated during the consideration of the proposal. Option (b) was therefore the only realistic option. Respondents agreed with this assessment.

COSTS AND BENEFITS

SECTORS AND GROUPS AFFECTED

— Businesses, groups and individuals involved in the aviation industry (commercial, recreation and leisure).
— Air passengers.

The responses to the Initial RIA did not identify any further sectors and groups affected that HMG had not considered prior to the consultation.

BENEFITS

It is expected that the implementing measures for operations and pilot licensing will largely be based on existing harmonised requirements agreed by the JAA. It is therefore unlikely that they will impose any significant financial burden on the industry. Indeed the creation of a more efficient European system should, in time, reduce the burdens on UK industry.

As part of the consultation exercise we sought contributions from stakeholders on the potential benefits of this proposal. We also invited comments on any positive changes that could be made to the text.

In the medium to long term respondents expected costs to reduce due to savings of scale across the Union. Further benefits included:

— The use of Assessment Bodies was felt to be beneficial by some respondents, who put themselves forward as likely candidates.
— The provision of a pan-European Recreational Pilot’s Licence, with the free movement this entails was viewed favourably.
— The use of a General Practitioner in such a licence was felt to be positive and less costly than an Aero-medical Examiner.

COSTS

Costs are likely to come from a period of adaptation, by both industry and the Agency. It is expected that the implementing measures for operations and pilot licensing will largely be based on existing harmonised requirements agreed by the JAA. It is therefore unlikely that they will impose any significant financial burden on the industry. Again we sought opinions on the likely costs of the proposed amendments.

Concerns were expressed as to the adverse regulatory impact of a cabin crew licence and medical certificate scheme. The costs of the latter were expected to run into £1 million for one consultee. Furthermore, it was argued that this would not improve safety levels.

The Government has taken on board these comments and has put forward these arguments in the context of the Aviation Working Group.
SMALL FIRMS IMPACT TEST

We wished to obtain feedback from this sector of the economy on the expected impact of the proposal on their business arrangements. Concerns were expressed that there may be onerous requirements placed on recreational flying clubs, in particular with regard to flying training. The Government recognises that not all operators falling within the proposed definition of commercial operations should be required to fulfil the requirements of an AOC. HMG will seek to ensure that the Implementing Rules devised as a result of this Regulation will regulate some commercial operations such as Flying Training Organisations with a lighter touch than other commercial operations.

COMPETITION ASSESSMENT

We did not foresee any adverse competition effects however we invited comments on the likely effects of the proposal. Some respondents maintained that it was unfair for fractional ownership operations to be treated as non-commercial. They argued that these were commercial operations and should be administered as such.

The Government’s interpretation of the Regulation is that the level of regulation applied to commercial operations through the implementing rules will be proportionate to the activity performed. The Commission argues that, when an aircraft is above a certain size and level of complexity and where an accident would endanger a significant number of lives, it is reasonable to expect it to meet more onerous regulations, whether it is flown commercially or not. This seeks to ensure that fractional ownership operations are overseen to a satisfactory level regardless of their non-commercial classification.

ENFORCEMENT, SANCTIONS AND MONITORING

The Agency would implement some certification directly however the majority would be done by Member States’ national authorities according to their normal procedures.

Letter from the Chairman to Gillian Merron MP

Thank you for your letter of 28 November 2006. Sub-Committee B considered your letter at its meeting on 11 December.

We were grateful to you for updating the Committee on the proposal ahead of Transport Council. We shared the concerns about the competence of the EASA to take on an expanded role, which you expressed to us last December. We are pleased that the EASA’s performance “has improved significantly since then, and continues to do so”. We support the UK’s agreement to the general approach in Council.

Nevertheless we share your view that the Agency’s performance must be monitored over the coming year, and that if it were to deteriorate, we trust that you would reassess the UK’s position. As the proposal is subject to amendments in the European Parliament, we would be grateful to you for an update following the plenary first reading, which you expect to take place in March 2007.

We will maintain scrutiny at this stage.

12 December 2006

EUROPEAN MARITIME SAFETY AGENCY: POLLUTION CAUSED BY SHIPS (9577/05)

Letter from Stephen Ladyman MP, Minister of State for Transport, Department for Transport to the Chairman

You may recall my Explanatory Memorandum (EM) 9577/05 of June 2005 on the proposed Regulation on a multi-annual funding for EMSA to enable it to respond to maritime pollution incidents. Your Committee cleared the EM at the 1217th Chairman’s sift (14 June 2005).

I am now writing to update you on the outcome of the European Parliament’s (EP) first reading of this dossier. The EP supports the purpose of the Regulation and has considered ways to strengthen it. The EP’s Committee on Transport and Tourism originally tabled 21 amendments. Following discussions with the Commission and the Council, the EP dropped 15 of its original amendments and submitted a further 14 compromise amendments. The 20 amendments outstanding were agreed subsequently at the EP’s plenary meeting on 3 September 2006.

The amendments:
— stress the need for EMSA to pay attention to those coastal areas which are considered particularly vulnerable to pollution but without prejudice to any other area;
— emphasise that the existing Member State responsibilities with respect to pollution response mechanisms should not be affected by EMSA’s work;
— stress the need for EMSA, in accordance with its Action Plan, to play an active role in developing a centralised satellite-based service to assist the Member States in the detection of pollution and to help identify the ships responsible;
— define “oil” and “hazardous and noxious substances”;
— seek to provide EMSA with funding for its anti-pollution facilities in the medium to long-term;
— require the EP to be provided with an annual report on how EMSA is executing its counter pollution plan; and
— stress the need for the Commission to propose changes to the Regulation if deemed necessary by scientific progress.

The Government is pleased that the amendments put forward by the EP are constructive and do not seek to alter the planned budget of €154 million which has been approved to finance EMSA’s anti-pollution responses for the years 2007 to 2013. The Government considers that this level of funding is sufficient to provide real added value to the existing assets available to coastal EU Member States to deal with marine pollution incidents, but without compromising their international responsibilities in terms of providing an effective counter pollution response capacity.

It is expected that the Council will agree the compromise amendments put forward by the EP and that a first reading deal will be achieved shortly. In which case, the Regulation is likely to be published in the Official Journal next spring.

13 December 2006

Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter of 13 December. Sub-Committee B considered your letter at its meeting on 8 January 2007.

We were very grateful to you for updating the Committee on the progress of the Regulation following its first reading in the European Parliament, and are satisfied that the amendments agreed in the Parliament are in line with the UK’s priorities. In particular we note that the budget appears to strike the right balance between adding value to the resources available to coastal Member States without compromising their international commitments.

9 January 2007

EUROPEAN RAILWAY AGENCY: FREE MOVEMENT OF LOCOMOTIVES ACROSS THE EU
(17038/06, 17039/06, 17040/06, 5042/07)

Letter from the Chairman to Tom Harris MP, Parliamentary Under Secretary of State for Transport, Department for Transport

Sub-Committee B considered these documents, and your Explanatory Memorandum, at its meeting on 5 February 2007.

We share your support of the general attempt, through these proposals, to simplify the regulatory framework for the EU’s railways. We agree however that more clarity is needed on some of the proposed revisions to the safety Directive regarding the maintenance of rolling stock as well as the extension of the Interoperability Directive to the whole mainline network.

We would be grateful if you could update us on the outcome of the Transport Working Group on 16 February, and look forward to receiving a Regulatory Impact Assessment when the likely implementation of the proposals is easier to assess.

We will maintain scrutiny on the dossier at this stage.

7 February 2007
EU-US AVIATION AGREEMENT (8656/06)

Letter from Rt Hon Douglas Alexander, Secretary of State for Transport, Department for Transport to the Chairman

My Department submitted an Explanatory Memorandum on this proposal on 31 May 2006, following which there was an exchange of correspondence which rests with your letter of 25 July 2006 to Gillian Merron, in which you asked to be kept informed of further developments.

At that stage negotiations between the EU and the United States had ended, and further consideration of the draft agreement by the Transport Council suspended, pending the conclusion of the US Department of Transportation’s consultations on its proposed Rule on foreign control of US airlines. However, following opposition from the US Congress, the proposed Rule was in the event subsequently delayed and then, in December 2006, withdrawn.

At its subsequent meeting the EU Transport Council expressed its disappointment at this outcome and asked the European Commission to enter into further negotiations with the United States as soon as possible with a view to seeking further elements to ensure a proper balance of interests. As a result further negotiations were held between January and March, concluding in a revised draft first stage agreement that will now be presented to the Transport Council on 22 March.

The main elements of the draft first stage agreement remain as before (as set out in EM 8656/06), but new aspects added as a result of the latest discussion include:

— clarification of the rights for EU investors to own US airlines (within the limits of existing US legislation);
— measures to facilitate EU ownership of third country airlines;
— the EU reserving the right to introduce new limits on US investment in EU airlines on a reciprocal basis;
— provisions on franchising and branding that will help EU airlines or other companies to develop a presence in the US market;
— a commitment from the US that this agreement will qualify EU airlines to apply for antitrust immunity;
— some limited additional rights for EU carriers only to operate passenger services from the US to other destinations (so-called “seventh freedom services”);
— some limited access for Community carriers to certain types of US Government-financed traffic under the “Fly America” programme, with a commitment to consider further access in the next stage; and
— a list of agreed priority items for second stage negotiations, and a right for parties to withdraw rights under the agreement if no second stage agreement has been signed within a defined timetable.

We expect the Commission and Presidency to commend the revised agreement to the Council for its approval. The Council will not be asked to make a formal decision on signature or ratification of the agreement at this stage, and will not therefore be considering the proposed Council instruments that are currently subject to scrutiny. However, the Presidency has indicated that it will be seeking “political decision” from the Council to proceed on the basis of the current text, with a view to possible signature at the EU-US Summit on 30 April.

As you will be aware, there are strong views both for and against the draft agreement amongst UK interests. We have been in close discussion with interested parties since these negotiations began in 2003, and particularly so in recent weeks, and have listened carefully to their views.

As I am sure you will understand, I am afraid that I cannot pre-empt the discussion in the Council by setting out our intentions or our negotiating position in detail, but I thought it would be useful at this stage to update the committee on recent developments. It remains the UK’s position that our final goal must be a fully liberalised open aviation area, covering European and US markets, within which airlines are able to operate freely as regards routes, schedules, fares, ownership and control, based on commercial decisions and fair competition in an open market. The deal currently on the table would go some considerable way to delivering these objectives, but falls short in certain areas, particularly as regards the liberalisation of ownership and control restrictions. At the same time, we are aware of the current political realities within the United States, and of the benefits for consumers and other interests that the current deal would deliver. So what I and my fellow European transport ministers will need to consider at the Council is whether a phased approach is possible—one which unlocks some passenger and other benefits now, but also ensure that there is a clear

mechanism in place, with real incentives on both sides, to make early progress to achieving the fully open market that remains my ultimate objective.

I will, of course, keep you informed of the outcome of the Council discussions.

Finally, on a point of detail, you asked in your letter of 25 July about “potential new entrants” already holding slots at London Heathrow. Clearly it is difficult for me to speculate about the likely strategies of individual airlines. However, it is a matter of record that bmi, with the second largest slot portfolio at Heathrow, has long sought access to the Heathrow-US market. It is also the case that the draft agreement would make it possible for airlines from other EU countries to operate transatlantic services out of Heathrow, and that some of these do have significant slot holdings at the airport. And it could certainly be envisaged that potential new entrants might seek to secure slots through secondary trading, particularly within alliances.

16 March 2007

Letter from the Chairman to Rt Hon Douglas Alexander MP

Thank you for your letter of 16 March 2007, which Sub-Committee B considered at its meeting on 19 March. We were grateful to you for your report on the latest developments on the EU-USA agreement ahead of the Transport Council meeting on 22 March. As you will be aware, at our meeting on 19 March, we took evidence from two of your officials, David McMillan and Tim Figures. We were very grateful to them for clarifying some of the issues surrounding the agreement.

We believe that the “first phase” agreement which appears to be on the table for agreement in Council would represent some progress, although it falls far short of your goal of “a fully liberalised open aviation area”. This is a goal which we continue to share. The deal as it stands does seem to offer benefits for consumers and the UK economy as a whole, and these must be carefully weighed against the strong opposition it faces from some of the larger UK airlines.

Of particular concern to us is the likely continuance of the “Fly America” programme in the USA. We are aware that significant amendments to this policy would almost certainly require US primary legislation, but if the agreement is to be fairly balanced between European and American interests we would ask you to argue forcibly for strong “tie-ins” in the phase one deal which would address this programme.

As we have not been able to ascertain the details of the agreement, we will maintain scrutiny on the proposal, and would be grateful to you for a full report following the Transport Council.

21 March 2007

Letter from Rt Hon Douglas Alexander MP to the Chairman

Further to my letter of 16 March, I am writing as promised to inform you of the outcome of the Transport Council’s discussions on 22 March.

As expected, the Commission and Presidency commended the revised draft stage one agreement to the Council for its approval. After some discussion, the Council agreed unanimously to approve this agreement, with a view to its signature at the EU-US summit meeting in Washington on 30 April.

In its conclusions the Council also:

— re-iterated its ultimate objective of a fully liberalised open aviation area covering the EU and the US in accordance with the mandate agreed by the Council in June 2003;

— asked the Commission to secure agreement of the United States to put back the date of provisional application of the agreement to 30 March 2008 in order to give airlines and airports more time to prepare;

— underlined the importance of reaching a second stage agreement in order to pursue the benefits of liberalisation on both sides of the Atlantic and called upon the Commission to engage robustly with the United States government so as to secure this goal as quickly as possible; and

— agreed on a mechanism whereby, if no Stage 2 agreement has been reached within 12 months of the start of the review mentioned in Article 21(3) of the agreement, the Community will automatically give notice of the suspension of new traffic rights to the US under that article—such rights to be determined by each Member State in relation to its own territory—unless the Council decides by unanimity not to do so.

This agreement will bring an end to the restrictions on routes, frequencies and fares governing aviation between the UK and the US that stretch back over 60 years. It will also end the legal uncertainty surrounding UK-US aviation relations.
I am very much aware of the need for further progress towards our ultimate goal of a fully liberalised open aviation area. I am pleased that we secured at the Council a clear political commitment that this remains our goal, together with a detailed timetable for second stage negotiations and the unconstrained ability to take sanctions against the US if meaningful progress has not been made within that timetable.

I said to the Transport Select Committee that I would not sign up to a deal which was not in Britain’s best interests. Taking into account the further commitments and safeguards reflected in the Council conclusions, and bearing in mind the benefits this agreement would bring for UK interests, I took the view that this stage one deal satisfied that test. This agreement will sweep away outdated and illegal restrictions which stand at odds with our policy of air services liberalisation. It should deliver real benefits for UK consumers through increased competition and better services. It provides an open, deregulated transatlantic market place in which UK carriers—both existing and new—will be well placed to compete. It sets out a clear process for delivering our ultimate goal of a fully liberalised EU-US open aviation area. And I believe it will provide a real impetus to further deregulation and modernisation of the international aviation industry around the globe.

I was grateful for the Committee’s very prompt response to my previous letter, following the meeting on 19 March at which you took evidence from my officials.

I note that you maintained scrutiny on the proposal pending full details of the agreement. Accordingly, I attach a copy of the text of the final agreement as we expect it to be presented for signature. I note also your comments about the “Fly America” programme in the USA. The Government also remains concerned about the continuation of this programme. Although some concessions were obtained from the US side in the final stages of these negotiations, the bulk of the restrictions—which, as you say, are enshrined in US law—remain in place for the time being. That is why we have ensured that “further access to Government-financed air transportation” is specifically listed in Article 21 of the agreement as a priority item for the second stage negotiations.

With these explanations and assurances I hope you will feel able to lift scrutiny ahead of the proposed signature of the agreement.

11 April 2007

Annex A

AIR TRANSPORT AGREEMENT

The United States of America (hereinafter the “United States”), of the one part; and

The Republic of Austria,
The Kingdom of Belgium,
The Republic of Bulgaria,
The Republic of Cyprus,
The Czech Republic,
The Kingdom of Denmark,
The Republic of Estonia,
The Republic of Finland,
The French Republic,
The Federal Republic of Germany,
The Hellenic Republic,
The Republic of Hungary,
Ireland,
The Italian Republic,
The Republic of Latvia,
The Republic of Lithuania,
The Grand Duchy of Luxembourg,
The Republic of Malta,
The Kingdom of the Netherlands,
The Republic of Poland,
The Portuguese Republic,
Romania,
The Slovak Republic,
The Republic of Slovenia,
The Kingdom of Spain,
The Kingdom of Sweden,
The United Kingdom of Great Britain and Northern Ireland,
being parties to the Treaty establishing the European Community and being Member States of the European Union (hereinafter the "Member States"),
and the European Community, of the other part;
Desiring to promote an international aviation system based on competition among airlines in the marketplace with minimum government interference and regulation;
Desiring to facilitate the expansion of international air transport opportunities, including through the development of air transportation networks to meet the needs of passengers and shippers for convenient air transportation services;
Desiring to make it possible for airlines to offer the travelling and shipping public competitive prices and services in open markets;
Desiring to have all sectors of the air transport industry, including airline workers, benefit in a liberalized agreement;
Desiring to ensure the highest degree of safety and security in international air transport and reaffirming their grave concern about acts or threats against the security of aircraft, which jeopardize the safety of persons or property, adversely affect the operation of air transportation, and undermine public confidence in the safety of civil aviation;
Noting the Convention on International Civil Aviation, opened for signature at Chicago on December 7, 1944;
Recognizing that government subsidies may adversely affect airline competition and may jeopardize the basic objectives of this Agreement;
Affirming the importance of protecting the environment in developing and implementing international aviation policy;
Noting the importance of protecting consumers, including the protections afforded by the Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal May 28, 1999;
Intending to build upon the framework of existing agreements with the goal of opening access to markets and maximizing benefits for consumers, airlines, labor, and communities on both sides of the Atlantic;
Recognizing the importance of enhancing the access of their airlines to global capital markets in order to strengthen competition and promote the objectives of this Agreement;
Intending to establish a precedent of global significance to promote the benefits of liberalization in this crucial economic sector;
Have agreed as follows:

ARTICLE 1

Definitions
For the purposes of this Agreement, unless otherwise stated, the term:
1. “Agreement” means this Agreement, its Annexes and Appendix, and any amendments thereto;
2. “Air transportation” means the carriage by aircraft of passengers, baggage, cargo, and mail, separately or in combination, held out to the public for remuneration or hire;
3. “Convention” means the Convention on International Civil Aviation, opened for signature at Chicago on December 7, 1944, and includes:
   (a) any amendment that has entered into force under Article 94(a) of the Convention and has been ratified by both the United States and the Member State or Member States as is relevant to the issue in question, and
   (b) any Annex or any amendment thereto adopted under Article 90 of the Convention, insofar as such Annex or amendment is at any given time effective for both the United States and the Member State or Member States as is relevant to the issue in question;
4. “Full cost” means the cost of providing service plus a reasonable charge for administrative overhead;
5. “International air transportation” means air transportation that passes through the airspace over the territory of more than one State;
ARTICLE 2

Fair and Equal Opportunity

Each Party shall allow a fair and equal opportunity for the airlines of both Parties to compete in providing the international air transportation governed by this Agreement.

ARTICLE 3

Grant of Rights

1. Each Party grants to the other Party the following rights for the conduct of international air transportation by the airlines of the other Party:
   (a) the right to fly across its territory without landing;
   (b) the right to make stops in its territory for non-traffic purposes;
   (c) the right to perform international air transportation between points on the following routes:
      (i) for airlines of the United States (hereinafter “US airlines”), from points behind the United States via the United States and intermediate points to any point or points in any Member State or States and beyond; and for all-cargo service, between any Member State and any point or points (including in any other Member States);
      (ii) for airlines of the European Community and its Member States (hereinafter Community airlines), from points behind the Member States via the Member States and intermediate points to any point or points in the United States and beyond; for all-cargo service, between the United States and any point or points; and, for combination services, between any point or points in the United States and any point or points in any member of the European Common Aviation Area (hereinafter the “ECAA”) as of the date of signature of this Agreement; and
   (d) the rights otherwise specified in this Agreement.

2. Each airline may on any or all flights and at its option:
   (a) operate flights in either or both directions;
   (b) combine different flight numbers within one aircraft operation;
   (c) serve behind, intermediate, and beyond points and points in the territories of the Parties in any combination and in any order;
   (d) omit stops at any point or points;
   (e) transfer traffic from any of its aircraft to any of its other aircraft at any point;
serve points behind any point in its territory with or without change of aircraft or flight number and hold out and advertise such services to the public as through services;

(g) make stopovers at any point whether within or outside the territory of either Party;

(h) carry transit traffic through the other Party's territory; and

(i) combine traffic on the same aircraft regardless of where such traffic originates;

without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under this Agreement.

3. The provisions of paragraph 1 of this Article shall apply subject to the requirements that:

(a) for US airlines, with the exception of all-cargo services, the transportation is part of a service that serves the United States, and

(b) for Community airlines, with the exception of (i) all-cargo services and (ii) combination services between the United States and any member of the ECAA as of the date of signature of this Agreement, the transportation is part of a service that serves a Member State.

4. Each Party shall allow each airline to determine the frequency and capacity of the international air transportation it offers based upon commercial considerations in the marketplace. Consistent with this right, neither Party shall unilaterally limit the volume of traffic, frequency or regularity of service, or the aircraft type or types operated by the airlines of the other Party, nor shall it require the filing of schedules, programs for charter flights, or operational plans by airlines of the other Party, except as may be required for customs, technical, operational, or environmental (consistent with Article 15) reasons under uniform conditions consistent with Article 15 of the Convention.

5. Any airline may perform international air transportation without any limitation as to change, at any point, in type or number of aircraft operated; provided that, (a) for US airlines, with the exception of all-cargo services, the transportation is part of a service that serves the United States, and (b) for Community airlines, with the exception of (i) all-cargo services and (ii) combination services between the United States and a member of the ECAA as of the date of signature of this Agreement, the transportation is part of a service that serves a Member State.

6. Nothing in this Agreement shall be deemed to confer on:

(a) US airlines the right to take on board, in the territory of any Member State, passengers, baggage, cargo, or mail carried for compensation and destined for another point in the territory of that Member State;

(b) Community airlines the right to take on board, in the territory of the United States, passengers, baggage, cargo, or mail carried for compensation and destined for another point in the territory of the United States.

7. Community airlines' access to US Government procured transportation shall be governed by Annex 3.

**ARTICLE 4**

**Authorization**

On receipt of applications from an airline of one Party, in the form and manner prescribed for operating authorizations and technical permissions, the other Party shall grant appropriate authorizations and permissions with minimum procedural delay, provided:

(a) for a US airline, substantial ownership and effective control of that airline are vested in the United States, US nationals, or both, and the airline is licensed as a US airline and has its principal place of business in US territory;

(b) for a Community airline, substantial ownership and effective control of that airline are vested in a Member State or States, nationals of such a State or States, or both, and the airline is licensed as a Community airline and has its principal place of business in the territory of the European Community;

(c) the airline is qualified to meet the conditions prescribed under the laws and regulations normally applied to the operation of international air transportation by the Party considering the application or applications; and

(d) the provisions set forth in Article 8 (Safety) and Article 9 (Security) are being maintained and administered.
ARTICLE 5

Revocation of Authorization

1. Either Party may revoke, suspend or limit the operating authorizations or technical permissions or otherwise suspend or limit the operations of an airline of the other Party where:
   (a) for a US airline, substantial ownership and effective control of that airline are not vested in the United States, US nationals, or both, or the airline is not licensed as a US airline or does not have its principal place of business in US territory;
   (b) for a Community airline, substantial ownership and effective control of that airline are not vested in a Member State or States, nationals of such a State or States, or both, or the airline is not licensed as a Community airline or does not have its principal place of business in the territory of the European Community; or
   (c) that airline has failed to comply with the laws and regulations referred to in Article 7 (Application of Laws) of this Agreement.

2. Unless immediate action is essential to prevent further noncompliance with subparagraph 1(c) of this Article, the rights established by this Article shall be exercised only after consultation with the other Party.

3. This Article does not limit the rights of either Party to withhold, revoke, limit or impose conditions on the operating authorization or technical permission of an airline or airlines of the other Party in accordance with the provisions of Article 8 (Safety) or Article 9 (Security).

ARTICLE 6

Additional Matters related to Ownership, Investment, and Control

Notwithstanding any other provision in this Agreement, the Parties shall implement the provisions of Annex 4 in their decisions under their respective laws and regulations concerning ownership, investment and control.

ARTICLE 7

Application of Laws

1. The laws and regulations of a Party relating to the admission to or departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its territory, shall be applied to the aircraft utilized by the airlines of the other Party, and shall be complied with by such aircraft upon entering or departing from or while within the territory of the first Party.

2. While entering, within, or leaving the territory of one Party, the laws and regulations applicable within that territory relating to the admission to or departure from its territory of passengers, crew or cargo on aircraft (including regulations relating to entry, clearance, immigration, passports, customs and quarantine or, in the case of mail, postal regulations) shall be complied with by, or on behalf of, such passengers, crew or cargo of the other Party's airlines.

ARTICLE 8

Safety

1. The responsible authorities of the Parties shall recognize as valid, for the purposes of operating the air transportation provided for in this Agreement, certificates of airworthiness, certificates of competency, and licences issued or validated by each other and still in force, provided that the requirements for such certificates or licences at least equal the minimum standards that may be established pursuant to the Convention. The responsible authorities may, however, refuse to recognize as valid for purposes of flight above their own territory, certificates of competency and licences granted to or validated for their own nationals by such other authorities.

2. The responsible authorities of a Party may request consultations with other responsible authorities concerning the safety standards maintained by those authorities relating to aeronautical facilities, aircrews, aircraft, and operation of the airlines overseen by those authorities. Such consultations shall take place within 45 days of the request unless otherwise agreed. If following such consultations, the requesting responsible authorities find that those authorities do not effectively maintain and administer safety standards and
requirements in these areas that at least equal the minimum standards that may be established pursuant to the Convention, the requesting responsible authorities shall notify those authorities of such findings and the steps considered necessary to conform with these minimum standards, and those authorities shall take appropriate corrective action. The requesting responsible authorities reserve the right to withhold, revoke or limit the operating authorization or technical permission of an airline or airlines for which those authorities provide safety oversight in the event those authorities do not take such appropriate corrective action within a reasonable time and to take immediate action as to such airline or airlines if essential to prevent further noncompliance with the duty to maintain and administer the aforementioned standards and requirements resulting in an immediate threat to flight safety.

3. The European Commission shall simultaneously receive all requests and notifications under this Article.

4. Nothing in this Article shall prevent the responsible authorities of the Parties from conducting safety discussions, including those relating to the routine application of safety standards and requirements or to emergency situations that may arise from time to time.

**Article 9**

**Security**

1. In accordance with their rights and obligations under international law, the Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Parties shall in particular act in conformity with the following agreements: the Convention on Offenses and Certain Other Acts Committed on Board Aircraft, done at Tokyo September 14, 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague December 16, 1970, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal September 23, 1971, and the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, done at Montreal February 24, 1988.

2. The Parties shall provide upon request all necessary assistance to each other to address any threat to the security of civil aviation, including the prevention of acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, of their passengers and crew, and of airports and air navigation facilities.

3. The Parties shall, in their mutual relations, act in conformity with the aviation security standards and appropriate recommended practices established by the International Civil Aviation Organization and designated as Annexes to the Convention; they shall require that operators of aircraft of their registries, operators of aircraft who have their principal place of business or permanent residence in their territory, and the operators of airports in their territory act in conformity with such aviation security provisions.

4. Each Party shall ensure that effective measures are taken within its territory to protect aircraft and to inspect passengers, crew, and their baggage and carry-on items, as well as cargo and aircraft stores, prior to and during boarding or loading; and that those measures are adjusted to meet increased threats to the security of civil aviation. Each Party agrees that the security provisions required by the other Party for departure from and while within the territory of that other Party must be observed. Each Party shall give positive consideration to any request from the other Party for special security measures to meet a particular threat.

5. With full regard and mutual respect for each other’s sovereignty, a Party may adopt security measures for entry into its territory. Where possible, that Party shall take into account the security measures already applied by the other Party and any views that the other Party may offer. Each Party recognizes, however, that nothing in this Article limits the ability of a Party to refuse entry into its territory of any flight or flights that it deems to present a threat to its security.

6. A Party may take emergency measures including amendments to meet a specific security threat. Such measures shall be notified immediately to the responsible authorities of the other Party.

7. The Parties underline the importance of working towards compatible practices and standards as a means of enhancing air transport security and minimizing regulatory divergence. To this end, the Parties shall fully utilize and develop existing channels for the discussion of current and proposed security measures. The Parties expect that the discussions will address, among other issues, new security measures proposed or under consideration by the other Party, including the revision of security measures occasioned by a change in circumstances; measures proposed by one Party to meet the security requirements of the other Party; possibilities for the more expeditious adjustment of standards with respect to aviation security measures; and compatibility of the requirements of one Party with the legislative obligations of the other Party. Such
discussions should serve to foster early notice and prior discussion of new security initiatives and requirements.

8. Without prejudice to the need to take immediate action in order to protect transportation security, the Parties affirm that when considering security measures, a Party shall evaluate possible adverse effects on international air transportation and, unless constrained by law, shall take such factors into account when it determines what measures are necessary and appropriate to address those security concerns.

9. When an incident or threat of an incident of unlawful seizure of aircraft or other unlawful acts against the safety of passengers, crew, aircraft, airports or air navigation facilities occurs, the Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat.

10. When a Party has reasonable grounds to believe that the other Party has departed from the aviation security provisions of this Article, the responsible authorities of that Party may request immediate consultations with the responsible authorities of the other Party. Failure to reach a satisfactory agreement within 15 days from the date of such request shall constitute grounds to withhold, revoke, limit, or impose conditions on the operating authorization and technical permissions of an airline or airlines of that Party. When required by an emergency, a Party may take interim action prior to the expiry of 15 days.

11. Separate from airport assessments undertaken to determine conformity with the aviation security standards and practices referred to in paragraph 3 of this Article, a Party may request the cooperation of the other Party in assessing whether particular security measures of that other Party meet the requirements of the requesting Party. The responsible authorities of the Parties shall coordinate in advance the airports to be assessed and the dates of assessment and establish a procedure to address the results of such assessments. Taking into account the results of the assessments, the requesting Party may decide that security measures of an equivalent standard are applied in the territory of the other Party in order that transfer passengers, transfer baggage, and/or transfer cargo may be exempted from re-screening in the territory of the requesting Party. Such a decision shall be communicated to the other Party.

**Article 10**

**Commercial Opportunities**

1. The airlines of each Party shall have the right to establish offices in the territory of the other Party for the promotion and sale of air transportation and related activities.

2. The airlines of each Party shall be entitled, in accordance with the laws and regulations of the other Party relating to entry, residence, and employment, to bring in and maintain in the territory of the other Party managerial, sales, technical, operational, and other specialist staff who are required to support the provision of air transportation.

3. (a) Without prejudice to subparagraph (b) below, each airline shall have in relation to groundhandling in the territory of the other Party:
   (i) the right to perform its own groundhandling (“self-handling”) or, at its option
   (ii) the right to select among competing suppliers that provide groundhandling services in whole or in part where such suppliers are allowed market access on the basis of the laws and regulations of each Party, and where such suppliers are present in the market.

   (b) The rights under (i) and (ii) in subparagraph (a) above shall be subject only to specific constraints of available space or capacity arising from the need to maintain safe operation of the airport. Where such constraints preclude self-handling and where there is no effective competition between suppliers that provide ground-handling services, all such services shall be available on both an equal and an adequate basis to all airlines; prices of such services shall not exceed their full cost including a reasonable return on assets, after depreciation.

4. Any airline of each Party may engage in the sale of air transportation in the territory of the other Party directly and/or, at the airline’s discretion, through its sales agents or other intermediaries appointed by the airline. Each airline shall have the right to sell such transportation, and any person shall be free to purchase such transportation, in the currency of that territory or in freely convertible currencies.

5. Each airline shall have the right to convert and remit from the territory of the other Party to its home territory and, except where inconsistent with generally applicable law or regulation, the country or countries of its choice, on demand, local revenues in excess of sums locally disbursed. Conversion and remittance shall
be permitted promptly without restrictions or taxation in respect thereof at the rate of exchange applicable to current transactions and remittance on the date the carrier makes the initial application for remittance.

6. The airlines of each Party shall be permitted to pay for local expenses, including purchases of fuel, in the territory of the other Party in local currency. At their discretion, the airlines of each Party may pay for such expenses in the territory of the other Party in freely convertible currencies according to local currency regulation.

7. In operating or holding out services under the Agreement, any airline of a Party may enter into co-operative marketing arrangements, such as blocked-space or code-sharing arrangements, with:
   (a) any airline or airlines of the Parties;
   (b) any airline or airlines of a third country; and
   (c) a surface (land or maritime) transportation provider of any country;
provided that (i) all participants in such arrangements hold the appropriate authority and (ii) the arrangements meet the conditions prescribed under the laws and regulations normally applied by the Parties to the operation or holding out of international air transportation.

8. The airlines of each Party shall be entitled to enter into franchising or branding arrangements with companies, including airlines, of either Party or third countries, provided that the airlines hold the appropriate authority and meet the conditions prescribed under the laws and regulations normally applied by the Parties to such arrangements. Annex 5 shall apply to such arrangements.

9. The airlines of each Party may enter into arrangements for the provision of aircraft with crew for international air transportation with:
   (a) any airlines or airlines of the Parties; and
   (b) any airlines or airlines of a third country;
provided that all participants in such arrangements hold the appropriate authority and meet the conditions prescribed under the laws and regulations normally applied by the Parties to such arrangements. Neither Party shall require an airline of either Party providing the aircraft to hold trademarks under this Agreement for the routes on which the aircraft will be operated.

10. Notwithstanding any other provision of this Agreement, airlines and indirect providers of cargo transportation of the Parties shall be permitted, without restriction, to employ in connection with international air transportation any surface transportation for cargo to or from any points in the territories of the Parties, or in third countries, including transport to and from all airports with customs facilities, and including, where applicable, the right to transport cargo in bond under applicable laws and regulations. Such cargo, whether moving by surface or by air, shall have access to airport customs processing and facilities. Airlines may elect to perform their own surface transportation or to provide it through arrangements with other surface carriers, including surface transportation operated by other airlines and indirect providers of cargo air transportation. Such intermodal cargo services may be offered at a single, through price for the air and surface transportation combined, provided that shippers are not misled as to the facts concerning such transportation.

**Article 11**

*Customs Duties and Charges*

1. On arriving in the territory of one Party, aircraft operated in international air transportation by the airlines of the other Party, their regular equipment, ground equipment, fuel, lubricants, consumable technical supplies, spare parts (including engines), aircraft stores (including but not limited to such items of food, beverages and liquor, tobacco and other products destined for sale to or use by passengers in limited quantities during flight), and other items intended for or used solely in connection with the operation or servicing of aircraft engaged in international air transportation shall be exempt, on the basis of reciprocity, from all import restrictions, property taxes and capital levies, customs duties, excise taxes, and similar fees and charges that are (a) imposed by the national authorities or the European Community, and (b) not based on the cost of services provided, provided that such equipment and supplies remain on board the aircraft.

2. There shall also be exempt, on the basis of reciprocity, from the taxes, levies, duties, fees and charges referred to in paragraph 1 of this Article, with the exception of charges based on the cost of the service provided:
(a) aircraft stores introduced into or supplied in the territory of a Party and taken on board, within reasonable limits, for use on outbound aircraft of an airline of the other Party engaged in international air transportation, even when these stores are to be used on a part of the journey performed over the territory of the Party in which they are taken on board;

(b) ground equipment and spare parts (including engines) introduced into the territory of a Party for the servicing, maintenance, or repair of aircraft of an airline of the other Party used in international air transportation;

(c) fuel, lubricants and consumable technical supplies introduced into or supplied in the territory of a Party for use in an aircraft of an airline of the other Party engaged in international air transportation, even when these supplies are to be used on a part of the journey performed over the territory of the Party in which they are taken on board; and

(d) printed matter, as provided for by the customs legislation of each Party, introduced into or supplied in the territory of one Party and taken on board for use on outbound aircraft of an airline of the other Party engaged in international air transportation, even when these stores are to be used on a part of the journey performed over the territory of the Party in which they are taken on board.

3. Equipment and supplies referred to in paragraphs 1 and 2 of this Article may be required to be kept under the supervision or control of the appropriate authorities.

4. The exemptions provided by this Article shall also be available where the airlines of one Party have contracted with another airline, which similarly enjoys such exemptions from the other Party, for the loan or transfer in the territory of the other Party of the items specified in paragraphs 1 and 2 of this Article.

5. Nothing in this Agreement shall prevent either Party from imposing taxes, levies, duties, fees or charges on goods sold other than for consumption on board to passengers during a sector of an air service between two points within its territory at which embarkation or disembarkation is permitted.

6. In the event that two or more Member States envisage applying to the fuel supplied to aircraft of US airlines in the territories of such Member States for flights between such Member States any waiver of the exemption contained in Article 14(b) of Council Directive 2003/96/EC of 27 October 2003, the Joint Committee shall consider that issue, in accordance with paragraph 4(e) of Article 18.

7. A Party may request the assistance of the other Party, on behalf of its airline or airlines, in securing an exemption from taxes, duties, charges and fees imposed by state and local governments or authorities on the goods specified in paragraphs 1 and 2 of this Article, as well as from fuel through-put charges, in the circumstances described in this Article, except to the extent that the charges are based on the cost of providing the service. In response to such a request, the other Party shall bring the views of the requesting Party to the attention of the relevant governmental unit or authority and urge that those views be given appropriate consideration.

**ARTICLE 12**

**User Charges**

1. User charges that may be imposed by the competent charging authorities or bodies of each Party on the airlines of the other Party shall be just, reasonable, not unjustly discriminatory, and equitably apportioned among categories of users. In any event, any such user charges shall be assessed on the airlines of the other Party on terms not less favorable than the most favorable terms available to any other airline at the time the charges are assessed.

2. User charges imposed on the airlines of the other Party may reflect, but shall not exceed, the full cost to the competent charging authorities or bodies of providing the appropriate airport, airport environmental, air navigation, and aviation security facilities and services at the airport or within the airport system. Such charges may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis.

3. Each Party shall encourage consultations between the competent charging authorities or bodies in its territory and the airlines using the services and facilities, and shall encourage the competent charging authorities or bodies and the airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles of paragraphs 1 and 2 of this Article. Each Party shall encourage the competent charging authorities to provide users with reasonable notice of any proposal for changes in user charges to enable users to express their views before changes are made.
4. Neither Party shall be held, in dispute resolution procedures pursuant to Article 19, to be in breach of a provision of this Article, unless (a) it fails to undertake a review of the charge or practice that is the subject of complaint by the other Party within a reasonable amount of time; or (b) following such a review it fails to take all steps within its power to remedy any charge or practice that is inconsistent with this Article.

**ARTICLE 13**

**Pricing**

1. Prices for air transportation services operated pursuant to this Agreement shall be established freely and shall not be subject to approval, nor may they be required to be filed.

2. Notwithstanding paragraph 1:
   
   (a) The introduction or continuation of a price proposed to be charged or charged by a US airline for international air transportation between a point in one Member State and a point in another Member State shall be consistent with Article 1(3) of Council Regulation (EEC) 2409/92 of 23 July 1992, or a not more restrictive successor regulation.
   
   (b) Under this paragraph, the airlines of the Parties shall provide immediate access, on request, to information on historical, existing, and proposed prices to the responsible authorities of the Parties in a manner and format acceptable to those authorities.

**ARTICLE 14**

**Government Subsidies and Support**

1. The Parties recognize that government subsidies and support may adversely affect the fair and equal opportunity of airlines to compete in providing the international air transportation governed by this Agreement.

2. If one Party believes that a government subsidy or support being considered or provided by the other Party for or to the airlines of that other Party would adversely affect or is adversely affecting that fair and equal opportunity of the airlines of the first Party to compete, it may submit observations to that Party. Furthermore, it may request a meeting of the Joint Committee as provided in Article 18, to consider the issue and develop appropriate responses to concerns found to be legitimate.

3. Each Party may approach responsible governmental entities in the territory of the other Party, including entities at the state, provincial or local level, if it believes that a subsidy or support being considered or provided by such entities will have the adverse competitive effects referred to in paragraph 2. If a Party decides to make such direct contact it shall inform promptly the other Party through diplomatic channels. It may also request a meeting of the Joint Committee.

4. Issues raised under this Article could include, for example, capital injections, cross-subsidization, grants, guarantees, ownership, relief or tax exemption, by any governmental entities.

**ARTICLE 15**

**Environment**

1. The Parties recognize the importance of protecting the environment when developing and implementing international aviation policy. The Parties recognize that the costs and benefits of measures to protect the environment must be carefully weighed in developing international aviation policy.

2. When a Party is considering proposed environmental measures, it should evaluate possible adverse effects on the exercise of rights contained in this Agreement, and, if such measures are adopted, it should take appropriate steps to mitigate any such adverse effects.

3. When environmental measures are established, the aviation environmental standards adopted by the International Civil Aviation Organization in Annexes to the Convention shall be followed except where differences have been filed. The Parties shall apply any environmental measures affecting air services under this Agreement in accordance with Article 2 and 3(4) of this Agreement.
4. If one Party believes that a matter involving aviation environmental protection raises concerns for the application or implementation of this Agreement, it may request a meeting of the Joint Committee, as provided in Article 18, to consider the issue and develop appropriate responses to concerns found to be legitimate.

**ARTICLE 16**

*Consumer Protection*

The Parties affirm the importance of protecting consumers, and either Party may request a meeting of the Joint Committee to discuss consumer protection issues that the requesting Party identifies as significant.

**ARTICLE 17**

*Computer Reservation Systems*

1. Computer Reservation Systems (CRS) vendors operating in the territory of one Party shall be entitled to bring in, maintain, and make freely available their CRSs to travel agencies or travel companies whose principal business is the distribution of travel-related products in the territory of the other Party provided the CRS complies with any relevant regulatory requirements of the other Party.

2. Neither Party shall, in its territory, impose or permit to be imposed on the CRS vendors of the other Party more stringent requirements with respect to CRS displays (including edit and display parameters), operations, practices, sales, or ownership than those imposed on its own CRS vendors.

3. Owners/Operators of CRSs of one Party that comply with the relevant regulatory requirements of the other Party, if any, shall have the same opportunity to own CRSs within the territory of the other Party as do owners/operators of that Party.

**ARTICLE 18**

*The Joint Committee*

1. A Joint Committee consisting of representatives of the Parties shall meet at least once a year to conduct consultations relating to this Agreement and to review its implementation.

2. A Party may also request a meeting of the Joint Committee to seek to resolve questions relating to the interpretation or application of this Agreement. However, with respect to Article 20 or Annex 2, the Joint Committee may consider questions only relating to the refusal by either Participant to implement the commitments undertaken, and the impact of competition decisions on the application of this Agreement. Such a meeting shall begin at the earliest possible date, but not later than 60 days from the date of receipt of the request, unless otherwise agreed.

3. The Joint Committee shall review, no later than at its first annual meeting and thereafter as appropriate, the overall implementation of the Agreement, including any effects of aviation infrastructure constraints on the exercise of rights provided for in Article 3, the effects of security measures taken under Article 9, the effects on the conditions of competition, including in the field of Computer Reservation Systems, and any social effects of the implementation of the Agreement.

4. The Joint Committee shall also develop cooperation by:

   (a) fostering expert-level exchanges on new legislative or regulatory initiatives and developments, including in the fields of security, safety, the environment, aviation infrastructure (including slots), and consumer protection;

   (b) considering the social effects of the Agreement as it is implemented and developing appropriate responses to concerns found to be legitimate;

   (c) considering potential areas for the further development of the Agreement, including the recommendation of amendments to the Agreement;

   (d) maintaining an inventory of issues regarding government subsidies or support raised by either Party in the Joint Committee;

   (e) making decisions, on the basis of consensus, concerning any matters with respect to application of paragraph 6 of Article 11;
(f) developing, within one year of provisional application, approaches to regulatory determinations with regard to airline fitness and citizenship, with the goal of achieving reciprocal recognition of such determinations;

(g) developing a common understanding of the criteria used by the Parties in making their respective decisions in cases concerning airline control, to the extent consistent with confidentiality requirements;

(h) fostering consultation, where appropriate, on air transport issues dealt with in international organizations and in relations with third countries, including consideration of whether to adopt a joint approach;

(i) taking, on the basis of consensus, the decisions to which paragraph 3 of Article 1 of Annex 4 and paragraph 3 of Article 2 of Annex 4 refer.

5. The Parties share the goal of maximizing the benefits for consumers, airlines, labor, and communities on both sides of the Atlantic by extending this Agreement to include third countries. To this end, the Joint Committee shall work to develop a proposal regarding the conditions and procedures, including any necessary amendments to this Agreement, that would be required for third countries to accede to this Agreement.

6. The Joint Committee shall operate on the basis of consensus.

ARTICLE 19

Arbitration

1. Any dispute relating to the application or interpretation of this Agreement, other than issues arising under Article 20 or under Annex 2, that is not resolved by a meeting of the Joint Committee may be referred to a person or body for decision by agreement of the Parties. If the Parties do not so agree, the dispute shall, at the request of either Party, be submitted to arbitration in accordance with the procedures set forth below.

2. Unless the Parties otherwise agree, arbitration shall be by a tribunal of three arbitrators to be constituted as follows:

(a) Within 20 days after the receipt of a request for arbitration, each Party shall name one arbitrator. Within 45 days after these two arbitrators have been named, they shall by agreement appoint a third arbitrator, who shall act as President of the tribunal.

(b) If either Party fails to name an arbitrator, or if the third arbitrator is not appointed in accordance with subparagraph (a) of this paragraph, either Party may request the President of the Council of the International Civil Aviation Organization to appoint the necessary arbitrator or arbitrators within 30 days of receipt of that request. If the President of the Council of the International Civil Aviation Organization is a national of either the United States or a Member State, the most senior Vice President of that Council who is not disqualified on that ground shall make the appointment.

3. Except as otherwise agreed, the tribunal shall determine the limits of its jurisdiction in accordance with this Agreement and shall establish its own procedural rules. At the request of a Party, the tribunal, once formed, may ask the other Party to implement interim relief measures pending the tribunal’s final determination. At the direction of the tribunal or at the request of either Party, a conference shall be held not later than 15 days after the tribunal is fully constituted for the tribunal to determine the precise issues to be arbitrated and the specific procedures to be followed.

4. Except as otherwise agreed or as directed by the tribunal:

(a) The statement of claim shall be submitted within 30 days of the time the tribunal is fully constituted, and the statement of defense shall be submitted 40 days thereafter. Any reply by the claimant shall be submitted within 15 days of the submission of the statement of defense. Any reply by the respondent shall be submitted within 15 days thereafter.

(b) The tribunal shall hold a hearing at the request of either Party, or may hold a hearing on its own initiative, within 15 days after the last reply is filed.

5. The tribunal shall attempt to render a written decision within 30 days after completion of the hearing or, if no hearing is held, within 30 days after the last reply is submitted. The decision of the majority of the tribunal shall prevail.
6. The Parties may submit requests for clarification of the decision within 10 days after it is rendered and any clarification given shall be issued within 15 days of such request.

7. If the tribunal determines that there has been a violation of this Agreement and the responsible Party does not cure the violation, or does not reach agreement with the other Party on a mutually satisfactory resolution within 40 days after notification of the tribunal’s decision, the other Party may suspend the application of comparable benefits arising under this Agreement until such time as the Parties have reached agreement on a resolution of the dispute. Nothing in this paragraph shall be construed as limiting the right of either Party to take proportional measures in accordance with international law.

8. The expenses of the tribunal, including the fees and expenses of the arbitrators, shall be shared equally by the Parties. Any expenses incurred by the President of the Council of the International Civil Aviation Organization, or by any Vice President of that Council, in connection with the procedures of paragraph 2(b) of this Article shall be considered to be part of the expenses of the tribunal.

ARTICLE 20

Competition

1. The Parties recognize that competition among airlines in the transatlantic market is important to promote the objectives of this Agreement, and confirm that they apply their respective competition regimes to protect and enhance overall competition and not individual competitors.

2. The Parties recognize that differences may arise concerning the application of their respective competition regimes to international aviation affecting the transatlantic market, and that competition among airlines in that market might be fostered by minimizing those differences.

3. The Parties recognize that cooperation between their respective competition authorities serves to promote competition in markets and has the potential to promote compatible regulatory results and to minimize differences in approach with respect to their respective competition reviews of inter-carrier agreements. Consequently, the Parties shall further this cooperation to the extent feasible, taking into account the different responsibilities, competencies and procedures of the authorities, in accordance with Annex 2.

4. The Joint Committee shall be briefed annually on the results of the cooperation under Annex 2.

ARTICLE 21

Second Stage Negotiations

1. The Parties share the goal of continuing to open access to markets and to maximize benefits for consumers, airlines, labor, and communities on both sides of the Atlantic, including the facilitation of investment so as to better reflect the realities of a global aviation industry, the strengthening of the transatlantic air transportation system, and the establishment of a framework that will encourage other countries to open their own air services markets. The Parties shall begin negotiations not later than 60 days after the date of provisional application of this Agreement, with the goal of developing the next stage expeditiously.

2. To that end, the agenda for the second stage negotiations shall include the following items of priority interest to one or both Parties:

(a) Further liberalization of traffic rights;
(b) Additional foreign investment opportunities;
(c) Effect of environmental measures and infrastructure constraints on the exercise of traffic rights;
(d) Further access to Government-financed air transportation; and
(e) provision of aircraft with crew.

3. The Parties shall review their progress towards a second stage agreement no later than 18 months after the date when the negotiations are due to start in accordance with paragraph 1. If no second stage agreement has been reached by the Parties within twelve months of the start of the review, each Party reserves the right
thereafter to suspend rights specified in this Agreement. Such suspension shall take effect no sooner than the start of the International Air Transport Association (IATA) traffic season that commences no less than twelve months after the date on which notice of suspension is given.

**ARTICLE 22**

*Relationship to Other Agreements*

1. During the period of provisional application pursuant to Article 25 of this Agreement, the bilateral agreements listed in section 1 of Annex 1, shall be suspended, except to the extent provided in section 2 of Annex 1.

2. Upon entry into force pursuant to Article 26 of this Agreement, this Agreement shall supersede the bilateral agreements listed in section 1 of Annex 1, except to the extent provided in section 2 of Annex 1.

3. If the Parties become parties to a multilateral agreement, or endorse a decision adopted by the International Civil Aviation Organization or another international organization, that addresses matters covered by this Agreement, they shall consult in the Joint Committee to determine whether this Agreement should be revised to take into account such developments.

**ARTICLE 23**

*Termination*

Either Party may, at any time, give notice in writing through diplomatic channels to the other Party of its decision to terminate this Agreement. Such notice shall be sent simultaneously to the International Civil Aviation Organization. This Agreement shall terminate at midnight GMT at the end of the International Air Transport Association (IATA) traffic season in effect one year following the date of written notification of termination, unless the notice is withdrawn by agreement of the Parties before the end of this period.

**ARTICLE 24**

*Registration with ICAO*

This Agreement and all amendments thereto shall be registered with the International Civil Aviation Organization.

**ARTICLE 25**

*Provisional Application*

Pending entry into force pursuant to Article 26:

1. The Parties agree to apply this Agreement from 30 March 2008.

2. Either Party may at any time give notice in writing through diplomatic channels to the other Party of a decision to no longer apply this Agreement. In that event, application shall cease at midnight GMT at the end of the International Air Transport Association (IATA) traffic season in effect one year following the date of written notification, unless the notice is withdrawn by agreement of the Parties before the end of this period.

**ARTICLE 26**

*Entry into Force*

This Agreement shall enter into force one month after the date of the later note in an exchange of diplomatic notes between the Parties confirming that all necessary procedures for entry into force of this Agreement have been completed. For purposes of this exchange, the United States shall deliver to the European Community the diplomatic note to the European Community and its Member States, and the European Community shall deliver to the United States the diplomatic note or notes from the European Community and its Member States. The diplomatic note or notes from the European Community and its Member States shall contain communications from each Member State confirming that its necessary procedures for entry into force of this Agreement have been completed.
IN WITNESS WHEREOF the undersigned, being duly authorized, have signed this Agreement.

DONE at [ ] on this [ ] day of 200 in duplicate.

For the United States of America

For the Republic of Austria
For the Kingdom of Belgium
For the Republic of Bulgaria
For the Republic of Cyprus
For the Czech Republic
For the Kingdom of Denmark
For the Republic of Estonia
For the Republic of Finland
For the French Republic
For the Federal Republic of Germany
For the Hellenic Republic
For the Republic of Hungary
For Ireland
For the Italian Republic
For the Republic of Latvia
For the Republic of Lithuania
For the Grand Duchy of Luxembourg
For the Republic of Malta
For the Kingdom of The Netherlands
For the Republic of Poland
For the Portuguese Republic
For Romania
For the Slovak Republic
For the Republic of Slovenia
For the Kingdom of Spain
For the Kingdom of Sweden
For the United Kingdom of Great Britain and Northern Ireland
For the European Community

ANNEX 1

Section 1

As provided in Article 22 of this Agreement, the following bilateral agreements between the United States and Member States shall be suspended or superseded by this Agreement:


   (amendment concluded on September 5, 1995 (provisionally applied).)

(c) The Republic of Bulgaria: Civil aviation security Agreement, signed at Sofia April 24, 1991.


(related protocol concluded November 1, 1978; related agreement concluded May 24, 1994; protocol amending the 1955 agreement concluded on May 23, 1996; agreement amending the 1996 protocol concluded on October 10, 2000 (all provisionally applied).)


(Memorandum of consultations, signed at Washington October 28, 1993 (provisionally applied).)


(Protocol amending the 1970 agreement concluded December 6, 1999 (provisionally applied).)


(Arrangements, being provisionally applied, contained in the memorandum of consultations dated September 11, 1986; arrangements contained in the exchange of letters dated July 27, 1990; arrangements contained in the memorandum of consultations of March 11, 1991; arrangements contained in the exchange of letters dated October 6, 1994; arrangements contained in the memorandum of consultations of June 5, 1995; arrangements contained in the exchange of letters dated March 31 and April 3, 2000 (all provisionally applied)).

Section 2

Notwithstanding section 1 of this Annex, for areas that are not encompassed within the definition of “territory” in Article 1 of this Agreement, the agreements in paragraphs (e) (Denmark–United States), (g) (France–United States), and (v) (United Kingdom–United States) of that section shall continue to apply, according to their terms.

Section 3

Notwithstanding Article 3 of this Agreement, US airlines shall not have the right to provide all-cargo services, that are not part of a service that serves the United States, to or from points in the Member States, except to or from points in the Czech Republic, the French Republic, the Federal Republic of Germany, the Grand Duchy of Luxembourg, the Republic of Malta, the Republic of Poland, the Portuguese Republic, and the Slovak Republic.

Section 4

Notwithstanding any other provisions of this Agreement, this section shall apply to scheduled and charter combination air transportation between Ireland and the United States with effect from the beginning of IATA winter season 2006/2007 until the end of the IATA winter season 2007/2008.

(a) 

(i) Each US and Community airline may operate 3 non-stop flights between the United States and Dublin for each non-stop flight that the airline operates between the United States and Shannon. This entitlement for non-stop Dublin flights shall be based on an average of operations over the entire three-season transitional period. A flight shall be deemed to be a non-stop Dublin, or a non-stop Shannon, flight, according to the first point of entry into, or the last point of departure from, Ireland.

(ii) The requirement to serve Shannon in subparagraph (a)(i) of this Section shall terminate if any airline inaugurates scheduled or charter combination service between Dublin and the United States, in either direction, without operating at least one non-stop flight to Shannon for every three non-stop flights to Dublin, averaged over the transition period.

(b) For services between the United States and Ireland, Community airlines may serve only Boston, New York, Chicago, Los Angeles, and 3 additional points in the United States, to be notified to the United States upon selection or change. These services may operate via intermediate points in other Member States or in third countries.

(c) Code sharing shall be authorized between Ireland and the United States only via other points in the European Community. Other code-share arrangements will be considered on the basis of comity and reciprocity.
ANNEX 2

Concerning Cooperation With Respect to Competition Issues in the Air Transportation Industry

Article 1

The cooperation as set forth in this Annex shall be implemented by the Department of Transportation of the United States of America and the Commission of the European Communities (hereinafter referred to as “the Participants”), consistent with their respective functions in addressing competition issues in the air transportation industry involving the United States and the European Community.

Article 2

Purpose

The purpose of this cooperation is:

1. To enhance mutual understanding of the application by the Participants of the laws, procedures and practices under their respective competition regimes to encourage competition in the air transportation industry;

2. To facilitate understanding between the Participants of the impact of air transportation industry developments on competition in the international aviation market;

3. To reduce the potential for conflicts in the Participants’ application of their respective competition regimes to agreements and other cooperative arrangements which have an impact on the transatlantic market; and

4. To promote compatible regulatory approaches to agreements and other cooperative arrangements through a better understanding of the methodologies, analytical techniques including the definition of the relevant market(s) and analysis of competitive effects, and remedies that the Participants use in their respective independent competition reviews.

Article 3

Definitions

For the purpose of this Annex, the term “competition regime” means the laws, procedures and practices that govern the Participants’ exercise of their respective functions in reviewing agreements and other cooperative arrangements among airlines in the international market. For the European Community, this includes, but is not limited to, Articles 81, 82, and 85 of the Treaty Establishing the European Community and their implementing Regulations pursuant to the said Treaty, as well as any amendments thereto. For the Department of Transportation, this includes, but is not limited to, sections 41308, 41309, and 41720 of Title 49 of the United States Code, and its implementing Regulations and legal precedents pursuant thereto.

Article 4

Areas of Cooperation

Subject to the qualifications in subparagraphs 1(a) and 1(b) of Article 5, the types of cooperation between the Participants shall include the following:

1. Meetings between representatives of the Participants, to include competition experts, in principle on a semi-annual basis, for the purpose of discussing developments in the air transportation industry, competition policy matters of mutual interest, and analytical approaches to the application of competition law to international aviation, particularly in the transatlantic market. The above discussions may lead to the development of a better understanding of the Participants’ respective approaches to competition issues, including existing commonalities, and to more compatibility in those approaches, in particular with respect to inter-carrier agreements.

2. Consultations at any time between the Participants, by mutual agreement or at the request of either Participant, to discuss any matter related to this Annex, including specific cases.

3. Each Participant may, at its discretion, invite representatives of other governmental authorities to participate as appropriate in any meetings or consultations held pursuant to paragraphs 1 or 2 above.
4. Timely notifications of the following proceedings or matters, which in the judgment of the notifying Participant may have significant implications for the competition interests of the other Participant:
   (a) With respect to the Department of Transportation, (i) proceedings for review of applications for approval of agreements and other cooperative arrangements among airlines involving international air transportation, in particular for antitrust immunity involving airlines organized under the laws of the United States and the European Community, and (ii) receipt by the Department of Transportation of a joint venture agreement pursuant to section 41720 of Title 49 of the United States Code; and
   (b) With respect to the Commission of the European Communities, (i) proceedings for review of agreements and other cooperative arrangements among airlines involving international air transportation, in particular for alliance and other cooperative agreements involving airlines organized under the laws of the United States and the European Community, and (ii) consideration of individual or block exemptions from European Union competition law;
5. Notifications of the availability, and any conditions governing that availability, of information and data filed with a Participant, in electronic form or otherwise, that, in the judgment of that Participant, may have significant implications for the competition interests of the other Participant; and
6. Notifications of such other activities relating to air transportation competition policy as may seem appropriate to the notifying Participant.

Article 5
Use and Disclosure of Information
1. Notwithstanding any other provision of this Annex, neither Participant is expected to provide information to the other Participant if disclosure of the information to the requesting Participant:
   (a) is prohibited by the laws, regulations or practices of the Participant possessing the information; or
   (b) would be incompatible with important interests of the Participant possessing the information.
2. Each Participant shall to the extent possible maintain the confidentiality of any information provided to it in confidence by the other Participant under this Annex and to oppose any application for disclosure of such information to a third party that is not authorized by the supplying Participant to receive the information.
   Each Participant intends to notify the other Participant whenever any information proposed to be exchanged in discussions or in any other manner may be required to be disclosed in a public proceeding.
3. Where pursuant to this Annex a Participant provides information on a confidential basis to the other Participant for the purposes specified in Article 2, that information should be used by the receiving Participant only for that purpose.

Article 6
Implementation
1. Each Participant is designating a representative to be responsible for coordination of activities established under this Annex.
2. This Annex, and all activities undertaken by a Participant pursuant to it, are—
   (a) intended to be implemented only to the extent consistent with all laws, regulations, and practices applicable to that Participant; and
   (b) intended to be implemented without prejudice to the Agreement between the European Communities and the Government of the United States of America Regarding the Application of their Competition Laws.

Annex 3
Concerning US Government Procured Transportation
Community airlines shall have the right to transport passengers and cargo on scheduled and charter flights for which a US Government civilian department, agency, or instrumentality (1) obtains the transportation for itself or in carrying out an arrangement under which payment is made by the Government or payment is made from amounts provided for the use of the Government, or (2) provides the transportation to or for a foreign
country or international or other organization without reimbursement, and that transportation is (a) between any point in the United States and any point in a Member State, except—with respect to passengers only—between points for which there is a city-pair contract fare in effect, or (b) between any two points outside the United States. This paragraph shall not apply to transportation obtained or funded by the Secretary of Defense or the Secretary of a military department.

ANNEX 4
Concerning Additional Matters Related to Ownership, Investment and Control

Article 1
Ownership of Airlines of a Party

1. Ownership by nationals of a Member State or States of the equity of a US airline shall be permitted, subject to two limitations. First, ownership by all foreign nationals of more than 25 percent of a corporation’s voting equity is prohibited. Second, actual control of a US airline by foreign nationals is also prohibited. Subject to the overall 25 percent limitation on foreign ownership of voting equity:

   (a) ownership by nationals of a Member State or States of:
      (1) as much as 25 percent of the voting equity; and/or
      (ii) as much as 49.9 percent of the total equity
   of a US airline shall not be deemed, of itself, to constitute control of that airline;
   and

   (b) ownership by nationals of a Member State or States of 50 percent or more of the total equity of a US airline shall not be presumed to constitute control of that airline. Such ownership shall be considered on a case-by-case basis.

2. Ownership by US nationals of a Community airline shall be permitted subject to two limitations. First, the airline must be majority owned by Member States and/or by nationals of Member States. Second, the airline must be effectively controlled by such states and/or such nationals.

3. For the purposes of paragraph (b) of Article 4 and subparagraph 1(b) of Article 5 of this Agreement, a member of the ECAA as of the date of signature of this Agreement and citizens of such a member shall be treated as a Member State and its nationals, respectively. The Joint Committee may decide that this provision shall apply to new members of the ECAA and their citizens.

4. Notwithstanding paragraph 2, the European Community and its Member States reserves the right to limit investments by US nationals in the voting equity of a Community airline made after the signature of this Agreement to a level equivalent to that allowed by the United States for foreign nationals in US airlines, provided that the exercise of that right is consistent with international law.

Article 2
Ownership and Control of Third-Country Airlines

1. Neither Party shall exercise any available rights under air services arrangements with a third country to refuse, revoke, suspend or limit authorizations or permissions for any airlines of that third country on the grounds that substantial ownership of that airline is vested in the other Party, its nationals, or both.

2. The United States shall not exercise any available rights under air services arrangements to refuse, revoke, suspend or limit authorizations or permissions for any airline of the Principality of Liechtenstein, the Swiss Confederation, a member of the ECAA as of the date of signature of this Agreement and citizens of such a member shall be treated as a Member State and its nationals, respectively. The Joint Committee may decide that this provision shall apply to new members of the ECAA and their citizens.

3. The Joint Committee may decide that neither Party shall exercise the rights referred to in paragraph 2 of this Article with respect to airlines of a specific country or countries.
Article 3

Control of Airlines

1. The rules applicable in the European Community on ownership and control of Community air carriers are currently laid down in Article 4 of Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers. Under this Regulation, responsibility for granting an Operating Licence to a Community air carrier lies with the Member States. Member States apply Regulation 2407/92 in accordance with their national regulations and procedures.

2. The rules applicable in the United States are currently laid down in Sections 40102(a)(2), 41102 and 41103 of Title 49 of the United States Code (U.S.C.), which require that licenses for a US “air carrier” issued by the Department of Transportation, whether a certificate, an exemption, or commuter license, to engage in “air transportation” as a common carrier, be held only by citizens of the United States as defined in 49 U.S.C. §40102(a)(15). That section requires that the president and two-thirds of the board of directors and other managing officers of a corporation be US citizens, that at least 75 percent of the voting stock be owned by US citizens, and that the corporation be under the actual control of US citizens. The requirement must be met initially by an applicant, and continue to be met by a US airline holding a license.

3. The practice followed by each Party in applying its laws and regulations is set out in the Appendix to this Annex.

APPENDIX TO ANNEX 4

1. In the United States, citizenship determinations are necessary for all US air carrier applicants for a certificate, exemption, or commuter license. An initial application for a license is filed in a formal public docket, and processed “on the record” with filings by the applicant and any other interested parties. The Department of Transportation renders a final decision by an Order based on the formal public record of the case, including documents for which confidential treatment has been granted. A “continuing fitness” case may be handled informally by the Department, or may be set for docketed procedures similar to those used for initial applications.

2. The Department’s determinations evolve through a variety of precedents, which reflect, among other things, the changing nature of financial markets and investment structures and the DOT’s willingness to consider new approaches to foreign investment that are consistent with US law. DOT works with applicants to consider proposed forms of investment and to assist them in fashioning transactions that fully comply with US citizenship law, and applicants regularly consult with DOT staff before finalizing their applications. At any time before a formal proceeding has begun, DOT staff may discuss questions concerning citizenship issues or other aspects of the proposed transaction and offer suggestions, where appropriate, as to alternatives that would allow a proposed transaction to meet US citizenship requirements.

3. In making both its initial and continuing citizenship and fitness determinations, DOT considers the totality of circumstances affecting the US airline, and Department precedents have permitted consideration of the nature of the aviation relationship between the United States and the homeland(s) of any foreign investors. In the context of this Agreement, DOT would treat investments from EU nationals at least as favorably as it would treat investments from nationals of bilateral or multilateral Open-Skies partners.

4. In the European Union, paragraph 5 of Article 4 of Regulation 2407/92 provides that the European Commission, acting at the request of a Member State, shall examine compliance with the requirements of Article 4 and take a decision if necessary. In taking such decisions the Commission must ensure compliance with the procedural rights recognized as general principles of Community law by the European Court of Justice, including the right of interested parties to be heard in a timely manner.

5. When applying its laws and regulations, each Party shall ensure that any transaction involving investment in one of its airlines by nationals of the other Party is afforded fair and expeditious consideration.

ANNEX 5

Concerning Franchising and Branding

1. The airlines of each Party shall not be precluded from entering into franchise or branding arrangements, including conditions relating to brand protection and operational matters, provided that: they comply, in particular, with the applicable laws and regulations concerning control; the ability of the airline to exist outside of the franchise is not jeopardized; the arrangement does not result in a foreign airline engaging in cabotage operations; and applicable regulations, such as consumer protection provisions, including those regarding the
disclosure of the identity of the airline operating the service, are complied with. So long as those requirements are met, close business relationships and cooperative arrangements between the airlines of each Party and foreign businesses are permissible, and each of the following individual aspects, among others, of a franchise or branding arrangement would not, other than in exceptional circumstances, of itself raise control issues:

(a) using and displaying a specific brand or trademark of a franchisor, including stipulations on the geographic area in which the brand or trademark may be used;
(b) displaying on the franchisee’s aircraft the colours and logo of the franchisor’s brand, including the display of such a brand, trademark, logo or similar identification prominently on its aircraft and the uniforms of its personnel;
(c) using and displaying the brand, trademark or logo on, or in conjunction with, the franchisee’s airport facilities and equipment;
(d) maintaining customer service standards designed for marketing purposes;
(e) maintaining customer service standards designed to protect the integrity of the franchise brand;
(f) providing for license fees on standard commercial terms;
(g) providing for participation in frequent flyer programs, including the accrual of benefits; and
(h) providing in the franchise or branding agreement for the right of the franchisor or franchisee to terminate the arrangement and withdraw the brand, provided that nationals of the United States or the Member States remain in control of the US or Community airline, respectively.

2. Franchising and branding arrangements are independent of, but may coexist with, a code-sharing arrangement that requires that both airlines have the appropriate authority from the Parties, as provided for in paragraph 7 of Article 10 of this Agreement.

Letter from the Chairman to Rt Hon Douglas Alexander MP

Thank you for your letter of 11 April, which included the full text of the “Phase One” Agreement. Sub-Committee B considered your letter, and the text, at its meeting on 23 April.

We were very grateful to you for your full report of the discussions and conclusions of the Council meeting on 22 March. We hope that your assessment that this phase one agreement is “in Britain’s best interests”, and note the immediate economic benefits that should result for the UK’s economy as a whole. Neverethlese, we do not see the “first phase” deal as representing a satisfactory outcome on its own in the long term. We would underline the importance of the “phase two” agreement, as we have consistently called for the fullest possible liberalisation of the aviation area between the EU and US. Making headway on the “Fly America” programme will be key to realising this.

In your letter you requested our clearance of the Agreement ahead of its proposed signature at the EU-US summit on 30 April. The scrutiny reserve applies to the decisions made in the Council of Ministers, and thus your support for this Agreement is technically an override of scrutiny. However as the Committee made it clear that we agreed with your signature; and we received as much information as the Government could have reasonably provided, we will not treat this as a formal override, and will include an explanation of the circumstances in any report we make of it.

We would welcome the opportunity to take evidence from you, or your officials, at a convenient point before the Summer Recess on your expectations for a phase two agreement to be concluded successfully next year.

24 April 2007

EXTERNAL ENERGY RELATIONS (14011/06)

Letter from the Chairman to Lord Truscott, Parliamentary Under Secretary of State for Energy, Department of Trade and Industry

Sub-Committee B considered this document, and your Explanatory Memorandum, at its meeting on 27 November 2006.

We share your endorsement of the Communication as “a positive step in the right direction”. In our report, The Commission’s Green Paper: A European Strategy for Sustainable, Competitive and Secure Energy, we endorsed the Commission’s proposals on developing a coherent external energy policy, and argued that “Such a framework, if properly defined, will allow participants in energy markets across Europe to negotiate with third parties in a manner consistent with the delivery of the main policy objectives”.

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24 April 2007
We would like to take this opportunity to remind you that the Government’s response to our report, published in July, is now over two months overdue. Can you give us an indication of when we can expect your response?

We are content to lift scrutiny on this document and will await legislative proposals in 2007. We would appreciate an update from you should any significant progress be made in current talks on an EU-Russia energy deal.

30 November 2006

Letter from Lord Truscott to the Chairman

Thank you for your letter of 30 November, indicating that the Committee is content to lift scrutiny on the above Commission Communication.

On EU/Russia, Member States are still in the process of agreeing the EU’s negotiating mandate for the post-PCA agreement. You may be interested to know that the second meeting of the EU/Russia Permanent Partnership Council (PPC) on Energy took place in Moscow on 8 December, just over a year after the first such PPC which took place in London during the UK’s EU Presidency. We have yet to hear a formal report of the recent PPC, although EU Member States had agreed to use the meeting to highlight a number of key messages, including:

— the importance of level playing fields for market access;
— the need for transparent, non-discriminatory and reciprocal access to markets and energy infrastructure, including pipelines;
— the need for cooperation to reflect the full range of energy priorities including environmental aspects of energy policy and addressing climate change; and
— the need for the post-PCA agreement to provide a favourable framework to pave the way for creating a stable, long-term energy relationship.

28 December 2006

Letter from the Chairman to Lord Truscott

Thank you for your letter of 28 December 2006, which Sub-Committee B considered at its meeting on 15 January 2007.

We were grateful to you for your update on the negotiations surrounding the post-PCA agreement with Russia, and hope that any such agreement reflects the four priorities agreed by Member States ahead of the second PPC meeting. We would be grateful for a report of the meeting when it is available.

16 January 2007

FREE MOVEMENT AND MARKETING OF GOODS WITHIN THE EU (6312/07, 6313/07)

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

Sub-Committee B considered these documents, and your Explanatory Memoranda, at its meeting on 5 March 2007.

We strongly welcome the Commission’s efforts to remove any barriers to the freedom of movement of goods in the EU, and share your support in principle for these initiatives. However, we note your uncertainty over the interaction of the draft Regulation with national law, and share your concern that it should not obstruct the ability of a Member State to take action in the interests of public safety. We would welcome a report from you when you have considered these implications in more detail, and when you have carried out your public consultation. We would also be grateful to you if you could set out the Government’s plans for establishing the point of single contact mentioned in your Explanatory Memorandum on the draft Regulation.

We are content to lift scrutiny on the Communication, but will maintain scrutiny on the draft Regulation at this stage.

7 March 2007
GALILEO GREEN PAPER ON SATELLITE NAVIGATION APPLICATIONS (16540/06)

Letter from the Chairman to Stephen Ladyman MP, Minister of State for Transport, Department for Transport

Sub-Committee B considered this document, and your Explanatory Memorandum, at its meeting on 22 January 2007.

We welcome the Green Paper as a good opportunity for a discussion across Europe on the possible ways in which Global Navigation Satellite Systems might be supported by the public sector other than those which are purely financial. We recognise the growing potential value of the downstream applications, but share your keenness that this potential does not mask the possibilities of other technologies.

We would be grateful to you to receive a copy of your response to the Green Paper when it is available. At this stage, we are content to lift scrutiny without prejudice to our assessment of the Commission’s action plan, which you expect in September 2007.

25 January 2007

GALILEO PROGRAMME (10427/06, 10431/06, 11282/06)

Letter from the Chairman to Stephen Ladyman MP, Minister of State for Transport, Department for Transport

Sub-Committee B considered this document (11282/06), and your Explanatory Memorandum, at its meeting on 9 October 2006.

As you will be aware from the Committee’s scrutiny of the related proposal (10431/06) earlier this year, we share the consensus view that the Galileo Joint Understanding’s responsibilities should be passed to the Galileo GNSS Supervisory Authority. It is important that the handover between the two bodies is rapid and smooth in order to avoid either unnecessary duplication or disruption to the scheme.

We are thus content to lift scrutiny from this document.

10 October 2006

Letter from Stephen Ladyman MP to the Chairman

I thought it would be helpful if I provided your Committee with an update on the developments that have taken place since I submitted the above Explanatory Memoranda, and a response to the queries the Committee raised. Both proposals have been the subject of discussion at Working Group, in Council, and in the European Parliament, and the UK is now content with the text of these draft Regulations.

EM 10431/06 refers to the Commission’s proposal for amending Regulation (EC) No 1321/2004 on the establishment of structures for the management of the European satellite navigation programmes—ie for the Galileo GNSS Supervisory Authority (GSA).

In addition to two more minor amendments that I will draw your attention to, there are two main developments I want to highlight. The first is to notify the Committee that the proposed legal base for the proposed Regulation has changed from Article 308 to Article 171. The legal base for Regulation 1321/04 is Article 308 and the Commission originally intended using the same legal base for the amending legislation. The decision was agreed by deputy ambassadors at their meeting on 29 September.

(i) It was our initial view, as set out in EM10431/06, that the use of Article 308 was justified for this proposal as we felt that it was appropriate for amending legislation to use the same Treaty base as the original legislative instrument. We considered that the primary purpose of the GSA was to regulate the Galileo programme, the contract with the concessionaire and public interests in relation to the programme. That said, given that the UK is now content with the text of the draft regulations, we are content for the amending legislation to be based on Article 171. In the circumstances we did not consider that arguing about the legal base would protect any UK interests.

The second development refers to our concerns about the treatment of intellectual property rights (IPR) under the proposal. The EM highlighted several issues in relation to IPR, in particular we called for a measure of flexibility to allow explicit recognition of prior Galileo IPR that may be owned by other third parties, including Member States, for the retention of IPR by the GSA to not be at disproportionate cost and for further clarification about the organisation that would be responsible for keeping and defending IPR. In doing so we had stressed to the Commission that our purpose was to enhance the clarity of the text and avoid any potential for future conflicts arising from possible inconsistencies. The Commission advised us that whilst the GSA
would be the sole owner of the Galileo system and associated IPR, this did not mean that the GSA could not allow others to make use of the IPR. For example, the GSA would have to allow the concessionaire to make use of the IPR in the first instance. Equally, there was nothing to prevent the GSA from allowing other parties or organisations such as a Member State or the European Space Agency (ESA) to use Galileo-related IPR. Explicit guidance could be sent out in the concession contract and any future proceedings would have to be consistent with it. The Commission also subsequently amended the Regulation to make it explicit that the references to the ownership of assets covers trade mark rights and all other property rights within the meaning of Article 1(1) of Commission Regulation 772/2004, on the application of Article 81(3) of the Treaty (Rules applying to undertakings) to categories of technology transfer agreements, and Article 2 of the Convention of 14 July 1967 establishing the Intellectual Property World Association. This makes clear that the GSA would be the proprietor of the IPR of the Galileo system. Given the assurances from the Commission and the amendments it made to the text we were content to lift our reserve on the legislation.

The first of the two minor amendments that I wish to mention provides for the establishment by the Administrative Board of a System Safety and Security Committee. It will be composed of one representative per Member State and one from the Commission. A representative from ESA and one from the Secretary-General of the Council, High Representative for the Common Foreign and Security Policy shall attend as observers. The second noteworthy amendment to the text grants ESA observer status on the Administrative Board and the proposed System Safety and Security Committee. This is a logical amendment in recognition of standard practice by which ESA is currently invited to attend meetings of the Administrative Board.

The European Parliament approved this Regulation on 12 October 2006. Member States reached a General Approach on the draft Regulation at the October Transport Council. The Regulation will now be adopted shortly. In commenting on EM 11282/06 of 25 July 2006 both Scrutiny Committees endorsed the intention to minimise the duplication of structures and costs of the GJU and the GSA. In doing so, however, the House of Commons Scrutiny Committee requested an explanation for the increased costs it was suggested that the GJU be authorised to finance, and confirmation that this would not be followed by further requests for public expenditure on Galileo. The additional funding is required to ensure the completion of the In Orbit Validation Phase (IOV). Further funding for this was necessary because of design changes and other unexpected development costs. The full details of how the Commission proposes to find the necessary finance required—€201 million (£139 million)—were set out in the earlier Explanatory Memorandum of 13 July 2006 on the Galileo stock take (Document 10427/06 COM (2006) 272 final). This amendment provides for the remaining resources from the GJU budget, after it is wound up, to be used for the Union’s contribution to the additional IOV costs.

Funding for the Galileo programme is split equally between the EU and ESA. Any consideration of further funds for Galileo would be for the GJU/GSA and ESA in the first instance. As the Government attaches great importance to securing value for money within the Galileo programme, we will look to ensure that all Galileo expenditure within ESA and the EU is subject to appropriate scrutiny and challenged when required.

There has been one change to note in the draft Regulation; 31 December 2006 has been inserted as the firm and final closing date for the GJU. Previously the closing date of the GJU had been the end of the development phase. This is now scheduled for 2008 and it is logical to alter this closing date in order to avoid duplication of structures and costs between the GJU and the GSA.

The European Parliament has now approved this Regulation. Member States reached a General Approach on the draft Regulation at the October Transport Council. The Regulation will now be adopted shortly.

I will continue to keep you informed of progress on the Galileo programme and expect to send you a Supplementary Explanatory Memorandum giving a more detailed update on the programme in due course.

27 November 2006

Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter of 27 November 2006. Sub-Committee B considered your letter at its meeting on 11 December.

We were grateful to you for updating us on both draft Regulations. We were pleased that your concerns over intellectual property rights have been addressed in the revised draft Regulation 10431/06, and are content to lift scrutiny on the document.
We look forward to receiving a Supplementary Explanatory Memorandum from you providing a more detailed update on the programme.

12 December 2006

Letter from Stephen Ladyman MP to the Chairman

I thought it would be helpful if I provided your Committee with an update on recent developments on the Galileo programme, since my letter and Supplementary EM 10427/06 of 27 November 2006 a copy of which is enclosed for ease of reference (not printed). I will also comment on a question raised by the Commons Committee during its consideration of the SEM, as it may also be of interest to your Committee. I will be writing separately concerning our response to the Commission’s Green Paper (EM 16540/06).

There were two agenda items on Galileo at the Transport Council on 22 March 2007. The first was an update from the Commission on the status of the Public Private Partnership (PPP) negotiations and the second was on a draft mandate proposal to authorise the Commission to open negotiations with non-EU countries on participation in the GSA.

The PPP negotiations have effectively been at a standstill for a number of months due to the inability of the private sector consortium bidding to run Galileo to agree a governance structure, to appoint a CEO (fully empowered to take decisions in the contract negotiations) and to agree the division of work amongst themselves. It had become impossible to smooth away these problems. Before the March Council, the Commission distributed two letters from the Presidency and Vice President Jacques Barrot, with a frank assessment of the present situation. Discussions at the Council concluded with the adoption of conclusions in which Ministers issued a strong message to the consortium with a deadline of 10 May for its governance to be agreed.

The Council conclusions reaffirm the decision for a PPP but acknowledge that the Commission should assess the options available and provide the results to the June Council. If there is no assurance by June that the negotiations can proceed, the Council may have to consider the other options. The UK will press for transparency on all proposed measures for taking the project forward and will continue to pursue our priority objectives of value for money for the Community, improved governance and competition within the programme.

The delay in the PPP negotiations is also affecting the EGNOS augmentation programme as it was hoped to transfer a certifiable, operational system to the concessionaire in March 2008. It now appears that although the documentation required for the system to be certified for safety-critical aviation use should be complete by that date, the necessary contracts with the private sector operator will not be in place to permit the transfer and provide the stable, long-term management and funding structure necessary for certification. The GSA, ESA, Eurocontrol, the Commission and EU Member States are therefore discussing interim management arrangements that will allow certification to take place and realise the benefits of the system.

A mandate for negotiations with third countries was agreed at the Council after prior discussion at Working Group level. Given the need to preserve the confidentiality of the negotiating process we were not able to inform your Committee of the scope and development of these proposals before the adoption of the text. The mandate authorises the Commission to open negotiations with non-EU countries that wish to enter into cooperation agreements with the GSA, with final approval resting with the Council. The proposal is that non-EU countries should have the possibility of participating in the GSA as associated members in a new and yet to be established body called the Galileo International Board (GIB). The proposal is that the GIB would be composed of representatives of the Commission, the EU Member States and one delegate per associated member. Its opinions would be considered by the GSA Administrative Board. We expect an amendment to EC Regulation 1321/2004 would be required to set up the GIB.

When I last wrote to update the Committee on developments in the Galileo Programme the Commons Committee agreed to clear the draft Regulations amending Council Regulations 1321/2004 and 871/2002 but requested more information on the proposed System Safety and Security Committee (3SC). In particular the Committee asked if:

— it was still the intention to supplement the Joint Action 2004/552/CFSP on aspects of Galileo affecting the security of the EU with another Joint Action establishing a Security and Safety Board and a Centre for Security and Safety; and

— if so, when a draft Joint Action is expected.

In its Explanatory Memorandum of 24 May 2004 on Joint Action 2004/552/CFSP the Foreign and Commonwealth Office (FCO) made reference to the need for a further Joint Action for the establishment of a security board or centre. The 3SC will not be an autonomous Board. It shall prepare system safety and
security related GSA Administrative Board decisions and give advice on the Authority’s papers and proposals, guidelines, specifications and the implementation of security policies.

It is being set up under the provisions of Article 10 of EC Regulation 1321/2004 to report on security and safety matters related to the Galileo programme. The Committee is expected to replace the Galileo Security Board. This was set up by the provisions of the Galileo Joint Undertaking (GJU) Regulation—876/2002—to advise the GJU on security matters. The GJU is now in voluntary liquidation and the planned transition to the GSA is being completed. The GSB is continuing while the 3SC is being set up. The 3SC will be largely composed of the same experts as the GSB. The 3SC is a first pillar body and will report directly to the GSA Administrative Board. Its terms of reference have recently been agreed by the Board and make it clear that a Member State can refer a matter to the Council for decision at any time. On second pillar matters the Council will be advised by the Council Security Committee (CSC) in GNSS formation—the Council’s own committee on GNSS. The UK will participate actively in both the committees as they pursue their remits.

The role, responsibilities and architecture of the Galileo Security Monitoring Centre (GSMC), as the Centre for Safety and Security is now known, which will be needed in the operational phase of Galileo, have not yet been defined. The working assumption is that it will be a unit within the GSA. Two studies for the GSMC have been let. UK officials have already provided detailed views to the contractors and are fully involved in the ongoing discussions.

Taking these developments into account, and following discussions between my officials and their counterparts in FCO and MOD (who provide us with technical and security policy advice) we no longer take the view that a further Joint Action is necessary. Neither the formation of the 3SC, nor the Council’s own security formation requires one. The working arrangements between the GSA and the Council Secretariat are currently still being defined. We will continue to work closely with FCO in monitoring the situation and will press for a further Joint Action if required.

23 April 2007

GLOBAL ENERGY EFFICIENCY AND RENEWABLE ENERGY FUND (13809/06)

Letter from the Chairman to Ian Pearson MP, Minister of State for Climate Change and the Environment, Department for Environment, Food and Rural Affairs

Sub-Committee B considered this document, and your Explanatory Memorandum, at its meeting on 22 January 2007.

We share your welcoming of this “novel approach” to the issue of improving energy efficiency. We hope that this fund will play a vital role in financing projects, which have an important role to play in the security and sustainability of energy supply, which might not otherwise have got off the ground, particularly in the developing world.

You mention in your EM that the proposal has been put to Council. We would be grateful if you could give us an indication of the response it received from the Member States, as well as for your expectations on where the minimum additional €20 million capital will be found. The Committee will return to the issue in due course to review the success of the scheme. In the mean time we would be grateful to you for your assessment of how effectively the allocation of funds will be monitored to ensure that they are used as intended by the Commission purely to finance these projects. We are content to lift scrutiny on this document.

25 January 2007

Letter from Ian Pearson MP to the Chairman


You asked for further views on three issues, the response of member states to the proposal, the source of the necessary additional $20 million and the governance and monitoring of the funds by the Commission regarding their allocation and proper use. My officials have sought clarification from the Commission.

On the first of these points, the reaction of member states has, as expected, been very positive. The launch of the fund comes at a time when much attention is focused on the issues surrounding climate change, development and the necessary investment in sustainable sources and usage of energy. The GEEREF fund is acknowledged as providing a useful mechanism to accelerate the transition to a global low carbon society whilst retaining a focus on the development needs of areas such as Sub-Saharan Africa.
Secondly I am pleased to tell you that in addition to the initial €80 million pledged by the Commission towards the initial minimum closing value of $100 million there have been pledges from the German and Italian Governments of €24 million and €8 million respectively and expressions of interest from the Dutch and Norwegian Governments.

Regarding the appropriate allocation of funds, the Commission has appointed Triodos Investment Management as the fund managers for GEEREF. Triodos have a strong track record in this sector including 25 years involvement in sustainable “green” banking. €2.5 billion assets under management with €1.1 billion in specialised investment funds, renewable energy funds in the UK and Luxembourg and 12 years experience in developing countries including management of €70 million in microfinance funds. The funds board of directors will be appointed by its shareholders and this board will provide the main governance input to the GEEREF. With a minimum of €10 million required for a seat currently Germany and the Commission are eligible to be board members. Underlying the board will be an investment committee that will make individual investment decisions. There is a regular (annual and quarterly) reporting and planning procedure. Given the strong track record of Triodos as fund managers and the clear reporting structure described to us by the Commission I am content that the funds will be allocated as intended.

If you require any further clarification or information I would be happy to provide it.

26 February 2007

Letter from the Chairman to Ian Pearson MP

Thank you for your letter of 26 February, which Sub-Committee B considered at its meeting on 12 March.

We were very grateful to you for setting out the level of support from other Member States; the additional money pledged by Germany and Italy; and the corporate governance structure for the GEEREF. We trust that you will update us should any significant developments be made.

19 March 2007

ILO MARITIME LABOUR CONVENTION (10900/06)

Letter from Stephen Ladyman MP, Minister of State for Transport, Department for Transport to the Chairman

Thank you for your letter of 25 July 200613 which reported Sub-Committee B’s consideration of this proposed Decision at its meeting of 24 July.

The Committee supported the Government’s intention to ratify the new ILO Maritime Labour Convention. However, you noted the Government’s concerns over issues of competence and asked for a detailed account of the reasons for these reservations. You also asked whether the Government was content that the draft Decision sufficiently identified and was restricted to those matters where the Community has established competence.

As the proposal stood at the time of the Committee’s consideration, the Government could not support the draft Decision, even though we fully intend to ratify the ILO Convention, because of our concerns that the Decision in itself could have had an unintended side-effect causing the conceding of competence by Member States in areas where competence is currently mixed or exclusive to Member States.

Of areas covered by the Convention, only the co-ordination of certain social security matters at Community level is subject to exclusive Community competence. All other aspects of the very wide-ranging Convention are subject to mixed or exclusive competence.

At the time of your earlier consideration, the Government was not content that the draft Decision sufficiently identified and was restricted to those matters where the Community had established competence. In discussions since your Committee’s consideration, the Government has pursued a revised text which clarifies the competence issue. A revised draft has emerged from discussions culminating in consideration at the Committee of Permanent Representatives on 29 November 2006. It will be considered by the Council of Ministers on 11–12 December, where the Presidency hopes that it will be possible to reach a General Approach on the proposal.

Article 1 of the draft Decision has been amended so that is is now explicit that the Decision only authorises Member States to ratify the Convention “for the parts falling under Community competence”. This means that the Decision does not bestow upon the Community any additional competence in relation to the fields covered by the provisions of the Convention.

Article 2 of the draft Decision has been amended so that Member States are required “to make efforts to take the necessary steps to deposit their instruments of ratification of the Convention” with the ILO “as soon as possible, preferably before 31 December 2010”.

This amendment is greatly preferable to the earlier text, which would have compelled Member States to ratify by 31 December 2008.

The UK Government and a majority of other Member States support this new text, which concedes no existing competence to the Community.

Your Committee also asked which EU measures might require the UK to implement parts of the new Convention which are not mandatory, or to implement additional measures which go beyond those contained in the Convention. No such measures are proposed at the moment. However the Commission Communication addressed to the social partners, on which an Explanatory Memorandum (EM 10901/06) was provided on 14 July at the same time as the EM on the proposed Decision, gives an indication of the nature of measure that could arise. In the Communication to social partners, the Commission specifically discusses ideas such as the adoption of additional Community legislation in areas for which provisions are made in the Convention but which are not covered, or only partly covered, at Community level, such as the regulation of recruitment agencies; going beyond the provisions of the Convention by applying higher standards in the Community than those provided for in the Convention, and making voluntary aspects of the Convention mandatory under Community legislation.

At the time of your earlier consideration, we would not have wished to see such measures emerging subsequent to a Decision which surrendered existing competence. Any such proposals to augment significantly the provisions of the Convention could undermine the concept of the level playing field which the Convention establishes at a global level and could have implications for the competitiveness of the flags of EU Member States. These concerns are now allayed.

The European Parliament has not yet considered the proposed decision, but is currently scheduled to have its Plenary First Reading in March 2007. I will, of course, keep you informed of any further developments.

4 December 2006

Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter of 4 December 2006. Sub-Committee B considered your letter at its meeting on 11 December.

We are reassured that the concerns over the respective competence of Member States and the Community “have now been allayed”, and view the Presidency’s compromise text as a significant improvement on the Commission’s proposed Decision, and recognise the value in Member States ratifying the new ILO Maritime Convention.

We remain concerned at the prospect of Community legislation making existing voluntary arrangements under the Convention compulsory, particularly as the Commission already seems to have declared its intent to do so in future.

We will maintain scrutiny at this stage, and look forward to receiving updates from you following the Transport Council and the Plenary First Reading in the European Parliament.

12 December 2006

INLAND TRANSPORT OF DANGEROUS GOODS (5080/07)

Letter from the Chairman to Stephen Ladyman MP, Minister of State for Transport, Department for Transport

Sub-Committee B considered these documents, and your Explanatory Memorandum, at its meeting on 5 February 2007.

We share your concerns over the potential for this Directive to place an unnecessary burden on the agricultural sector by extending the scope of regulation to tractors with a design speed of over 40km/hr. We fully support your intention to secure an exemption from the Directive, and hope that the current exemption for inland waterways contained in the draft is maintained. It also seems evident to us that there is a particular need for thorough consultation on the Directive, and thus a proper period should be allowed by the Commission.
We would be grateful to you for an update on any significant progress made in negotiations on this Directive. We will maintain scrutiny on the Directive at this stage.

7 February 2007

INLAND WATERWAY VESSELS (10522/00)

Letter from Stephen Ladyman MP, Minister of State for Transport, Department for Transport to the Chairman

I am writing to update your Committee on the progress made in negotiations on the above dossier following the European Parliament’s second reading. This proposal was originally launched in 1997 and your Committee referred the Explanatory Memorandum on an amended version of the proposal to Sub-Committee B on 3 October 2000 (1043rd sft). Lord Tordoff wrote to Keith Hill on 18 October 2000 requesting to be kept informed of negotiations and maintaining the scrutiny reserve. Further updates were supplied to the Committee by Keith Hill in his letter to Lord Tordoff on 14 November 2000 and David Jamieson in his letter to Lord Brabazon on 11 April 2002. In his response on 24 April 2002, Lord Brabazon expressed your Committee’s concern that nothing in the proposed Directive should compromise existing UK safety standards. David Jamieson wrote to you on 19 November 2004 and confirmed that the Directive will have the benefit of levering-up safety standards at the European level but without diluting standards or increasing safety risks on UK inland waterways.

As you may recall, the UK’s priority in the negotiations has been to safeguard our domestic safety standards for inland waterways which have been enhanced since the Marchioness disaster. Following the extensive negotiations on this dossier, which have been necessary due to the technical complexity of the subject matter, the proposal now secures the UK’s existing domestic safety standards.

The Transport Committee of the European Parliament did table three amendments on the dossier on 1 June 2006 which would have had the effect of excluding recreational craft of up to 24 metres from the scope of the Directive because of the existence of the Recreational Craft Directive 94/25/EC. However, 94/25/EC applies to “point of sale” standards and not to “in service” standards. The effect of the proposed amendments would therefore to have no harmonised standards across the EU for recreational craft. Boat owners would then have been denied the opportunity to use their boats freely on any EU inland water without their having to meet specific national standards. Consequently, the UK lobbied against the proposed amendments and only one amendment was supported in the Parliament’s plenary. This amendment requires the annexes of 94/25/EC and the new Inland Waterways Directive to be adjusted in comitology to ensure there are no contradictions or inconsistencies between them.

The Government is satisfied with this outcome and is pleased that we have secured the UK’s key objectives on this dossier, and that our own UK inland waterway safety standards will not be diluted. We expect that the Directive will come into force next Spring and there will then be a two-year transposition period.

17 October 2006

Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter dated 17 October 2006, which Sub-Committee B considered at its meeting on 30 October 2006.

We were grateful to you for updating us and congratulate you for securing a proposal which “now secures the UK’s existing domestic standards” after what proved to be lengthy and difficult negotiations.

3 November 2006

INNOVATION STRATEGY FOR THE EU (12940/06)

Letter from the Chairman to Lord Sainsbury of Turville, Parliamentary Under Secretary of State for Science and Innovation, Department of Trade and Industry

Sub-Committee B considered this document, and your Explanatory Memorandum, at its Meeting on 16 October 2006.

16 Correspondence with Ministers, 27th Report of Session 2001–02, HL Paper 146, p 43.
We share the Government’s assessment in welcoming this Communication as setting out calls for action in creating a more “innovation-friendly” environment in the EU. We also agree that the focus should be on improving and streamlining existing governance structures rather than creating new structures. With this focus in mind, we would be grateful if you could clarify your views on the proposal for a European Institute of Technology (which has been subject to scrutiny by Sub-Committee G). In your Explanatory Memorandum, you note the prominence attached to this proposal by the Commission and indicate that any such scheme must “add genuine value to existing schemes”. Have your views changed from those expressed to us on 13 February of this year, when you described the proposal as “a very simplistic idea” and “a little naive”?

We would be grateful to you for updates as and when legislative proposals arise, and are content to lift scrutiny on this document.

17 October 2006

Letter from Lord Sainsbury of Turville to the Chairman

Thank you for your letter of 17 October, in which you confirmed your Committee had lifted scrutiny on the above-mentioned document. The Government will be happy to provide your Committee with updates as and when legislative proposals arise.

You posed a specific question about the European Institute of Technology (EIT). This topic was discussed at the informal meeting of Heads of Government and State in Lahti on 20 October, under the innovation agenda item. This followed the Commission’s adoption on 18 October of the legislative proposal.

The Government will submit an Explanatory Memorandum on the Commission’s legislative proposal to your Committee shortly. I welcome, however, the fact that the Commission has taken full account of concerns expressed by the UK and other member states during the pre-proposal consultation stage, for example in ensuring that the focus of the EIT will be networks of existing excellent organisations operating in the academic, research and business spheres, with only a small administrative headquarters. However, the proposed budget of €2.37 billion and its impact on the rest of the Community budget is a significant concern. The Government will now study the proposal carefully, prior to the start of negotiations on the detail.

31 October 2006

Letter from the Chairman to Malcolm Wicks MP, Minister of State for Science and Innovation, Department of Trade and Industry

Thank you for your letter of 31 October, which Sub-Committee B considered at its meeting on 27 November. We were grateful to you for clarifying your position on the proposal for a European Institute of Technology (EIT) and for your assurance that you will update the Committee as and when legislative proposals arise from the Commission’s innovation strategy.

As you will be aware, the proposal for an EIT is currently held under scrutiny by Sub-Committee G, who will await your Explanatory Memorandum with interest. Meanwhile, we note that when our report into the Seventh Framework Programme for Research was debated on the floor of the House, there appeared to be little enthusiasm for the proposal.

30 November 2006

INNOVATION-FRIENDLY MODERN EUROPE (14065/06)

Letter from the Chairman to Malcolm Wicks MP, Minister of State for Science and Innovation, Department of Trade and Industry

Sub-Committee B considered this document, and your Explanatory Memorandum, at its meeting on 4 December 2006.

We agree that this document should be welcomed, and that within what is necessarily a broad based approach to innovation policy, it is important that the Competitiveness Council should focus on a limited number of concrete actions.
We note your concerns over the proposed measures to improve the European patent system, and would be grateful if you kept us informed on negotiations over these measures.

We are content to lift scrutiny on this document.

6 December 2006

INTELLIGENT MANUFACTURING SYSTEMS (11163/06)

Letter from the Chairman to Lord Sainsbury of Turville, Parliamentary Under Secretary of State for Science and Innovation, Department of Trade and Industry

Sub-Committee B considered this document, and your Explanatory Memorandum, at its meeting on 9 October 2006.

We share your support for the renewal and modification of the agreement on Research and Development activity in Intelligent Manufacturing Systems. We agree that such activity will be central if the goals of the Lisbon Agenda are to be met.

We are content to lift scrutiny on this document.

10 October 2006

MARITIME POLICY FOR THE UNION (11510/06)

Letter from the Chairman to Stephen Ladyman MP, Minister of State for Transport, Department for Transport

Sub-Committee B considered this document, and your Explanatory Memorandum, at its meeting on 16 October 2006.

The Green Paper clearly has the potential to impact on a number of areas of great importance, particularly to the UK. We share your concern that the Green Paper does not lead to policies which could impede the UK’s ability to exploit fully her own maritime resources. We would also like to see more clarity from the Commission on how any forthcoming proposals will relate to the existing proposal for a Maritime Strategy Directive.

We will maintain scrutiny on this document at this stage, and would of course be grateful to you for any updates as negotiations on this dossier progress. We would also be grateful to receive the results of the Government’s consultation, as soon as it is available.

17 October 2006

MARITIME TRANSPORT (16106/05)

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

Thank you for your letter of 19 July 2006, responding to Malcolm Wicks’ of 12 July. You asked to be kept informed of any developments in relation to the proposed Commission guidelines for the shipping industry.

Before I turn to the guidelines, I would like to thank you and your Committee for its very prompt action in raising the scrutiny reserve on this dossier in July. In the event, completely unexpectedly, other member states were unable to clear it in time, but we were very grateful for your efficiency. However, the proposal to repeal Regulation 4056/86 was unanimously adopted at the Competitiveness Council on 25 September. This repeal will take effect in October 2008.

I am pleased to report that the Commission has now published the “Issues” paper it promised that sets out some of the questions that will need to be resolved in preparing guidelines for the shipping industry, a copy of which is attached (not printed). My Department, together with DfT and OFT, have met the Chamber of Shipping and the Freight Transport Association to hear their views.

Any regime to replace the repealed block exemption needs to be compliant with EU Competition Law. With this in mind we are considering the proposal of the European Liner Affairs Association and generally agree with the view of the Commission set out in the Issues paper. The industry is highly concentrated with high barriers to entry and a history of collusion. The Commission therefore need to ensure that any proposals from the industry do not have the effect of encouraging collusion. Discussion continues between the Commission...
and the stakeholders, and we understand that the shipping lines and their customers, the shippers, are also now working more closely than previously to develop proposals acceptable to all, a development that we welcome.

You asked in your earlier letter how competition issues might arise in tramp shipping. Work on the part of the guidelines that will cover the tramp sector is at a much earlier stage, given that until now the Commission has not been responsible for competition law in this area (it has been solely the responsibility of National Competition Authorities). However one area where it is possible that competition issues may arise is in the way that the tramp sector uses “pools”. A “pool” is a collection of similar vessels, under different ownership, but which are operated under a single administration, with profits allocated under a pre-arranged mechanism. The purpose of the pool is to allow mainly small operators to provide a service to major customers. However, evidence to date suggests that the market works well and there have been no cases investigated by OFT (indeed we are aware of only one case among all EU Member States). The Commission are undertaking a fact-finding exercise with the tramp industry at present and the results are likely towards the end of the year. We expect a draft outline of the guidelines, covering the whole shipping industry early next year.

The Commission envisages adoption of draft guidelines next year. The final version of the guidelines will be issued before the end of the transitional period for liner conferences, which expires in October 2008.

6 November 2006

Letter from the Chairman to Rt Hon Ian McCartney MP

Thank you for your letter of 6 November 2006, which Sub-Committee B considered at its meeting on 27 November.

We were grateful to you for enclosing the Commission’s “issues paper” and join you in welcoming the fact that stakeholders and the Commission are now “working more closely than previously to develop a proposal acceptable to all”.

Furthermore we would be grateful to you for a copy of the Commission’s draft guidelines for the shipping industry when they are available.

29 November 2006

MARKETING OF PRODUCTS (6377/07, 6378/07)

Letter from the Chairman to Malcolm Wicks MP, Minister of State for Science and Innovation, Department of Trade and Industry

Sub-Committee B considered these documents and your Explanatory Memoranda, at its meeting on 12 March 2007.

We welcome the Commission’s move to establish a European Framework for Accreditation, and share your hope that these measures advance the twin causes of Better Regulation and greater competitiveness in the European Union. We note your concern that the scope of the draft Regulation be “defined more clearly” and would welcome a report from you once your consultation is complete. We share your view of the importance of the scope of the Regulation being clearly understood by all Member States and those examining authorities responsible for market surveillance.

Your Explanatory Memoranda mention the concerns of HMRC officials, which we note. Has there been any consultation of trading standards officers, with whom we would expect many of the obligations for market surveillance to rest?

We would be grateful for a report from you should any progress in negotiations be made on the draft Regulation. We will maintain scrutiny on both documents at this stage.

19 March 2007

Letter from Malcolm Wicks MP to the Chairman

Thank you for your letter of 19 March on behalf of the Select Committee. Thank you also for your support for a European Framework for Accreditation and your support for our attempts to clarify the scope of the Market Surveillance provisions of the Regulation Proposal (6377/07).

I can confirm that my officials have maintained close contact with the Local Authority Coordinators of Regulatory Services (LACORS), which represents the interests of the Trading Standards Departments in these matters, and that they have maintained close contact with officials of the Health and Safety Executive, which also has major responsibilities in this area.
At the request of the House of Commons European Scrutiny Committee, my officials are preparing a progress report on the negotiations now that we are approximately halfway through the German Presidency’s schedule of Council Working Party meetings. I should be pleased to send a copy to you as well.

16 April 2007

MOTOR VEHICLES: EMISSIONS AND ACCESS TO REPAIR INFORMATION (5163/06)

Letter from the Chairman to Stephen Ladyman MP, Minister of State for Transport, Department for Transport

Thank you for your letter of 8 August 2006, 19 replying to my letter of 28 June. Sub-Committee B considered your letter at its meeting on 9 October.

We are grateful to you for your update on negotiations on the Regulation, and share your continued opposition to the inclusion of fiscal incentives, although accept that it may not be possible to secure their exclusion from the text.

As you report, the positions of many of the Member States in relation to the European Parliament amendments remain unclear. We look forward to receiving a further update ahead of the Environment Council on 23 October, including your assessment of the likelihood of the Regulation being agreed.

We will maintain scrutiny on the proposal at this stage.

10 October 2006

Letter from the Chairman to Stephen Ladyman MP

Sub-Committee B considered this document, and your Supplementary Explanatory Memorandum, at its meeting on 27 November 2006.

We are grateful to you for keeping us informed on the progress made in the European Parliament’s Environment Committee. We would be further grateful for another update on the draft Regulation following the European Parliament’s plenary First Reading, which we understand will now take place in December. Clearly much will depend on whether the amendments proposed by the Environment Committee are adopted by the Parliament.

We will maintain scrutiny on the document at this stage.

29 November 2006

Letter from Stephen Ladyman MP to the Chairman

Thank you for your letter of 29 November 2006 regarding Sub-Committee B’s consideration of the above proposal and my supplementary explanatory memorandum of 30 October 2006.

The Finnish Presidency has been holding trialogue meetings with the European Parliament’s rapporteur and the Commission, in an attempt to agree a package of amendments to secure a first reading agreement between the Parliament and Council on this dossier. At the Committee of Permanent Representatives (COREPER) meeting on 5 December a qualified majority of member states indicated that they could accept the package that has been developed. We therefore expect that this will be put to a plenary session of the Parliament for voting on 14 December and that it will be put to the Environment Council for agreement on 18 December. We will, of course, report the outcome of the Parliament’s First Reading to you as requested. However, in view of the fact that there will not be time for Sub-Committee B to consider a report on the outcome of the plenary before Council’s vote, I am writing to inform you of the latest developments and the Government’s intended voting position in Council.

The package approved by COREPER contains the following key amendments to the Commission’s proposal:

(i) Euro 5 diesel NOx limits are tightened to 180mg/km for cars (similar % reduction for light goods vehicles);

(ii) a Euro 6 stage is inserted, tightening diesel NOx limits to 80mg/km for cars (and a similar % reduction for light goods vehicles); petrol vehicle limits are unchanged from Euro 5;

(iii) implementation dates are fixed at 1 September 2009 (Euro 5—new types of car), 1 January 2011 (Euro 5—all types of car), 1 September 2014 (Euro 6—new types of car), 1 September 2015 (Euro 6—all types of car), with an additional year in each case for Class II and III light goods vehicles;

(iv) at Euro 5 certain heavy passenger cars are treated as light goods vehicles in terms of emissions limits and implementation dates. The vehicles covered are “special purpose vehicles” (motorhomes, ambulances etc), 7+ seat vehicles over 2,000 kg reference (unladen) mass, and commercial wheelchair accessible vehicles over 1,760 kg reference mass (eg London taxis). Off-road vehicles which meet the reference mass and 7+ seat requirements are included in the scope of the derogation but only until 1 September 2012; and

(v) where member states offer fiscal incentives for early compliance with Euro 6, these may only start from the date that Euro 5 becomes mandatory.

Whilst the majority of these amendments are in line with changes the UK has been seeking, or we could consider accepting in order to reach an early agreement, the text on fiscal incentives is unacceptable. The UK has long opposed the adoption of tax measures under any basis other than Article 93 of the Treaty establishing the European Community. Whilst we have, from time to time, voted in favour of texts featuring permissive fiscal provisions in otherwise acceptable proposals, the current text restricts national tax policy. As a result, the Government intends to vote against this dossier on the grounds that it violates national tax sovereignty and restricts the ability of member states to encourage the earliest possible uptake of Euro 6 vehicles.

There is theoretically a possibility that the fiscal incentives issue could be resolved prior to the Council vote, although I do not think that this is likely. If, however, this matter were to be resolved the UK Government would wish to support the proposal in order to protect this negotiated improvement. I would like to assure you that we would not consider lifting the scrutiny reserve lightly. However I hope that the Committee would share our view that, if the opportunity arose to reach a satisfactory resolution to the fiscal issue, it would be appropriate for the Government to support it and prevent the adoption of a less advantageous measure.

7 December 2006

Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter of 7 December 2006 which Sub-Committee B considered at its meeting on 11 December.

We were grateful to you for updating us on the progress of negotiations on the draft Regulation. We understand that it will not now be possible for us to consider a report from you after the European Parliament’s First Reading before agreement is sought at the Environment Council.

We share your clear and consistent opposition to the provisions on fiscal incentives. As you report, it is unlikely that this issue will be resolved to the UK’s satisfaction ahead of Council. For this reason we will maintain scrutiny at this stage.

As you also write, there is however “theoretically a possibility” that the issue will be resolved before the Council vote. If this were to be the case, we would support the Government’s agreement to the proposal and not consider such an agreement to be an override of scrutiny. We look forward to receiving a full report from you following the meeting.

12 December 2006

Letter from Stephen Ladyman MP to the Chairman

Thank you for your letter of 12 December 2006 regarding the above proposal and my letter of 7 December 2006.

An indicated the European Parliament held their Plenary vote on this dossier on 12 December. They voted in favour of adopting the First Reading Deal package developed by the Finnish Presidency and the rapporteur, and agreed by COREPER, as summarised in my last letter.

The package was not put before the Environment Council for agreement on 18 December, simply because the Council Secretariat had not produced a final text for voting. However such a text was circulated on 21 December and we expect that it will be put to Council as an A point, for voting without debate.

As I explained in my letter of 7 December, when this happens, the Government intends to vote against the package on the grounds that the fiscal incentives text violates national tax sovereignty.
Based on the positions of Member States in COREPER, the UK will be isolated in its opposition to the package. As a result we expect the package will be adopted by a Qualified Majority Vote. Since the Council and the European Parliament’s texts are identical, this will conclude negotiations and the package will be adopted as a Regulation.

9 January 2007

Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter of 9 January 2007, which Sub-Committee B considered at its meeting on 22 January. We were grateful to you for your update on the draft Regulation. We share your regret at the continued inclusion of the provisions on fiscal incentives, and your belief that these provisions violate national tax sovereignty. We appreciate that there is now no way for the Government to defeat these provisions, but support your voting against the package in Council. As the text is now finalised, we will lift scrutiny at this stage.

25 January 2007

MULTILATERAL NUCLEAR ENVIRONMENTAL PROGRAMME (16062/06)

Letter from the Chairman to Lord Truscott, Parliamentary Under Secretary of State for Energy, Department of Trade and Industry

Sub-Committee B considered this document, and your Explanatory Memorandum, at its meeting on 15 January 2007.

We recognise the very great importance, in terms of security as well as the environment of the safe and effective management spent nuclear materials in the Russian Federation. Thus the MNEPR and Protocol are to be welcomed, and appear to have operated well since 2003.

Although your EM reports that there are “no legal or procedural issues”, there do appear to us to be some potential difficulties. Firstly, we note that the legal base used is Article 181a(3) in conjunction with 300(2). What are the Government’s views as to the appropriateness of Article 181a here, and particularly as to the application of Article 181a to non-developing countries? Secondly, we were unclear as to what role, if any, EURATOM has in the area covered by the agreement. Could you clarify this? Lastly, we would be grateful if you could tell us whether there will be, or has been, a declaration of competence in relation to this agreement, setting out the division of competence between the Community and Member States.

In light of these concerns, we will maintain scrutiny on the document at this stage.

16 January 2007

Letter from Lord Truscott to the Chairman

Thank you for your letter of 16 January, about the MNEPR Agreement and Protocol. You raised three queries about the MNEPR and the Associated Protocol. Firstly you asked for the Government’s view about the appropriateness of use of Article 181a(3) as the legal base for MNEPR. We note that article 181a(3) states that the Community and Member States shall carry out economic, financial and technical cooperation measures with third countries. It does not specifically limit cooperation to developing countries. As such, and especially in view of the critical importance of safe and effective management of the large and dangerous stockpiles of spent nuclear materials in the Russian Federation, we take the view that Article 181a is appropriate for use in these circumstances.

You also asked about the role of EURATOM. The MNEPR Framework Agreement has been signed twice by the Communities. One signature was on behalf of the European Community and another on behalf of Euratom. This means both have to ratify the Agreement. The ratification by Euratom has already taken place, and the Commission has published its decision in the Official Journal with no role to be played by the Parliament in this case. The present Council Decision which has been sent to the European Parliament only concerns conclusion on behalf of the European Community.

Thirdly, you asked about possible declaration of competence in relation to the agreement. As far as we are aware there are no plans to make a declaration of competence to set out the division of competence between the Community and Member States. The MNEPR agreement simply acts as a legal framework whereby signatories can agree to support project work to address the wide range of issues surrounding security and environmental safety of spent nuclear materials in the NW Russia region. Any programmes that are considered for support through the Community are submitted to Management Committees and Expert
Groups that represent the Member States. No programme is launched without the full approval of the Member States. There is also a wide range of further bodies, such as the Global Partnership Working Group and the IAEA Contact Expert Group, which work to ensure effective and efficient collaboration between the parties working under the MNEPR agreement in Russia.

29 January 2007

Letter from the Chairman to Lord Truscott

Thank you for your letter of 29 January 2007, replying to my letter of 16 January. Sub-Committee B considered your letter at its meeting on 19 February.

We were most grateful to you for your answers to our three questions, and note that, as far as you know, there will be no declaration of competence. We would of course welcome an update from you should this situation change.

We are content to lift scrutiny on the draft Decision.

26 February 2007

PAYMENT OF SERVICES IN THE INTERNAL MARKET (15625/05, 8758/06)

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

I refer to your letter of 25 January 2006\(^20\) that requested updates on the results of the Government’s consultation process for the Payment Services Directive (PSD) and other significant developments. HM Treasury published a consultation document on the PSD on 3 July 2006. Please find enclosed, for your Committee’s information, HM Treasury’s Summary of Responses to our consultation document and a revised Regulatory Impact Assessment (RIA) for the PSD (not printed). I have also set out below my assessment of the extent to which the draft Directive meets the criteria and concerns to which the Commons European Scrutiny Committee has drawn attention in previous reports.

The PSD is currently under negotiation in the Council of Ministers and in the European Parliament, and is likely to be discussed at the upcoming meeting of the Economic and Finance Ministers’ Council (ECOFIN) on 28 November 2006.

The Better Regulation Unit at Cabinet Office is content that these documents do not require further clearance from the Panel for Regulatory Accountability (PRA). I have therefore, through a separate letter to the Chair of the Commons European Scrutiny Committee, copied the documents to PRA members for information.

The Commons European Scrutiny Committee asked for my assessment of the extent to which the draft Directive met the criteria set out by Government in:

\begin{itemize}
  \item improving transparency;
  \item increasing competition;
  \item ensuring proportionality;
  \item promoting technical neutrality; and
  \item allowing the payments industry to operate in an environment that encourages growth and innovation.
\end{itemize}

My assessment of the European Commission’s original draft proposal for a Payment Services Directive is broadly positive. The licensing regime that the Commission has proposed for Payment Institutions is largely proportionate, and closer to the UK’s current, less stringent regime than that of many Member States. I believe this to be proportionate to the risks involved in the provision of payment services. Also, during work on previous drafts of the proposal, the UK successfully pressed for the introduction of a waiver regime for smaller firms. As I previously indicated to the PRA, I continue to see the key challenge in negotiations on this Directive as supporting this proportionate approach, whilst securing improvements throughout the Directive to ensure that it remains beneficial to payment service providers and users in the UK.

\begin{itemize}
  \item To improve transparency, the draft Directive contains provisions to ensure payment service users have relevant and sufficient information when using payment services. HM Treasury supports this objective, and will work to secure improvements in the Directive to prevent information overload in favour of a balanced approach to ensure users are informed to exercise choice in the payments market.
\end{itemize}

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— **To ensure proportionality and improve competition**, the draft Directive introduces a licensing regime for a new category of payment service providers—called Payment Institutions—alongside credit institutions and E-money issuers which currently provide payment services. It also contains a provision that opens up access to payment systems to non-bank payment service providers, which should have a significantly positive impact on competition. HM Treasury supports this move to bring non-bank participants into the payments market, and will push for the new licensing regime to remain proportionate to the risks involved in providing payment services. In addition, we will also continue to press for an appropriate waiver for smaller Payment Institutions, such as money remitters, to ensure they can continue to operate without being subject to additional regulatory requirements.

— **To promote technical neutrality**, the draft Directive does not contain provisions discriminating between payment service providers using different types of payments technology. HM Treasury will continue work to ensure that the provisions within the Directive are workable for a wide variety of business models.

— **To encourage growth and innovation**, the draft Directive harmonises the legal and technical provisions necessary to underpin a single market in payment services, which the European Commission estimates will bring significant efficiency savings. If adopted, the Directive will also facilitate the payments industry’s work to create a Single Euro Payments Area (SEPA), which aims to develop new products and services to allow cross-border Euro payments to be made as easily, cheaply and quickly as in individual Member States. HM Treasury supports this objective, and will work to ensure the Directive’s provisions remain workable for different business models, including models using innovative payments technologies.

I have enclosed the Summary of Responses to the consultation document and the revised Regulatory Impact Assessment (not printed) which have been finalised in consultation with the Better Regulation Executive at the Cabinet Office. I believe that both these documents provide a detailed and thorough assessment of the negotiating options available to the UK. The documents conclude that the benefits of the European Commission’s draft Directive will outweigh the costs identified if the UK proceeds to support its general thrust whilst constructively seeking changes where necessary, taking into account the responses received during our consultation process.

*15 November 2007*

**Letter from the Chairman to Ed Balls MP**

Thank you for your letter of 15 November 2006, Sub-Committee B considered your letter at its meeting on 27 November.

We were grateful to you for providing us with both the revised RIA and the summary of responses from the Treasury’s consultation on the draft Directive. We are also reassured that the Directive as it stands conforms to the Government’s criteria on transparency, proportionality, competitiveness, technical neutrality, and growth and innovation.

We are content to lift scrutiny ahead of the meeting of the Economic and Finance Ministers’ Council on 28 November.

*29 November 2006*

**PURSUIT OF TELEVISION BROADCASTING ACTIVITIES**

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

Sub-Committee B considered this document, and your Explanatory Memorandum, at its meeting on 23 April 2007.

We were very grateful to you for depositing the amended Directive with us, and affording us the opportunity to scrutinise it before the Education, Youth and Culture Council on 24–25 May. You earlier mentioned that you would be willing to meet with us prior to the Council, following the submission of this Explanatory Memorandum and your response to our report *Television Without Frontiers*, which we have also now received. We look forward to meeting you before the Council meeting having considered both documents.

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We will maintain scrutiny on this text, and in doing so clear scrutiny on EM 15983/05, which this document replaces.

24 April 2007

PORT STATE CONTROL (5632/06)

Letter from Stephen Ladyman MP, Minister of State for Transport, Department for Transport to the Chairman

I am writing to bring your Committee up to date with developments on the above proposal. Your letter of 25 July 200622 requested further information about the progress of negotiations of the draft Directive. This letter reflects the state of negotiations following the most recent discussions at Working Group and the Committee of Representatives (COREPER) at the end of November, and the proposed compromises issued by the Presidency on 4 December.

Progress in negotiations has taken longer than originally anticipated, in part due to parallel discussions concerning technical issues on the development of the New Ship Inspection (NIR) regime within the Paris Memorandum of Understanding on Port State Control (the Paris MOU) which includes EU states and others, notably Russia and Canada. The NIR lies at the heart of the recast of the existing Directive and underpins the better targeting for inspection of those ships which pose the greatest risk. Those technical issues have been resolved and although there are some issues to be discussed by Ministers at the Council on 11 December, the Presidency believes it should be possible to achieve a General Approach.

Although negotiations on a range of technical issues have been protracted, those discussions have not impacted on the general thrust of the Commission’s proposal, which is about focussing port state control resources on those ships which by virtue of their type, flag State, inspection record etc, pose the greatest potential risk while reducing the inspection burden on ships known to be of good quality. That makes for better regulation and it is why the thrust of Commission’s proposal has our support and why we were keen to start work on the dossier under the UK Presidency.

While I am content with the text which the Presidency will present to Council for a General Approach, I said in my Explanatory Memorandum that we had doubts about the value of imposing a duty on deep sea pilots to report any defects in the ship or its operation which they observe. Most pilots are not marine surveyors and are therefore not appropriately qualified to make the necessary judgements, and there is the risk that some ship owners will be dissuaded from taking pilots if they were to be seen to be acting as agents of a port state (spy in the cab). If that was to be the case, there might be an adverse impact on safe navigation. While we have not been successful in persuading sufficient other Member States of that potential risk, the proposed duty on deep sea pilots has been diluted and the requirement to report has been limited to what might reasonably be observed by a pilot in his normal course of duty on board. Not ideal, but I think a reasonable compromise in the circumstances.

The matters which the Presidency is looking to Ministers to resolve in Council on 11 December are as follows:

BANNING VESSELS FROM COMMUNITY PORTS

The Commission wants to extend the present provisions for refusing access to Community ports for those vessels which have repeatedly been detained in port following inspection to enable serious deficiencies to be rectified before being allowed to sail. We have no difficulty with extending the present provisions but we are opposed to the proposal for a mandatory lifetime ban for the worst offending ships. Refusing access to EU ports for a period, which might be indefinite, is an appropriate sanction on ships which repeatedly fail port state control inspections, but a lifetime ban is disproportionate, not least because a bad ship can become a good one if, eg, it is acquired by more responsible owners and then properly maintained and run. We should not rule out that possibility.

The Presidency has proposed a compromise which I support and which I believe will find favour with the majority of other Member States. Rather than a lifetime ban for the worst offending ships, the Presidency has proposed that such ships are refused access to Community ports for an indefinite period which must be of no less than three years. After three years, a ship which had been indefinitely refused access might be allowed to regain access, but on the condition that there was clear evidence that the ship was now being operated and maintained in line with international and Community regulations on safety and environmental performance.

INSPECTING SHIPS AND ANCHORAGES

The Directive will require ships calling at Community ports which are due for inspection to be inspected regardless of whether or not they are tied up at a berth or moored at an anchorage. That is very sensible, but the scope and interpretation of an anchorage has prompted some debate in working group which Ministers will need to resolve. The Presidency has suggested that ships at anchorages are ships in a port, or another area within the jurisdiction of the port, but not at a berth when engaged in the business of a port (which would exclude ships at anchor which are not making a port call but have anchored for other reasons, such as awaiting orders as to the final destination of their cargoes). At COREPER the UK reserved its position on the text, but I am prepared to support the Presidency’s proposal, which is also supported by at least two other Member States. The views of the other Member States are unknown, since they have formally entered scrutiny reservations without expressing a view.

MISSED INSPECTIONS

Using targeting factors developed by the Paris MOU, in the context of the NIR, port states are free to select ships for inspection. However, port states will be required to inspect certain ships. Whether a mandatory inspection is due will depend on a number of factors, such as the type and age of the ship, the time elapsed since it was last inspected, the ship’s inspection record and the performance of its flag State. The Commission recognises that it is impossible for any port State to inspect 100% of the ships calling at its ports which are due a mandatory inspection, given, eg, the problems of getting an inspector to the ship if the port call is short, at a remote port, and, say, in the early hours of a Sunday morning. The Commission has proposed that a port state can be allowed to miss up to 5% of mandatory inspections. We can live with that, given the flexibility of the UK port inspection workforce and the resources available to us. However, it is a major problem for most Member States. After considerable debate in working group, the Presidency has proposed a compromise text for Council which will retain the 5% exemption for mandatory inspections of ships, but apply it only in relation to ships which have a high risk profile. For ships with a lower risk profile but which are due mandatory inspections the Presidency is proposing an exemption of up to 10%. I intend to support the Presidency compromise, which will also be supported by the large majority of other Member States.

As I said in my Explanatory Memorandum, we consulted industry prior to the UK Presidency and, not unexpectedly, found support for the broad thrust of the Commission’s proposals, since what is being proposed should reduce the inspection burden on reputable shipowners. Although discussions on the dossier have been protracted, they have been of a detailed nature and have not had any direct impact on the benefit the UK industry expects to derive from the Directive. So to date it has not been felt necessary to engage in further direct consultations with the industry.

The European Parliament has begun its consideration of this dossier and is currently expected to have its Plenary First Reading in late April 2007. I will, of course, continue to keep your Committee informed of progress on this dossier, including the outcome of the discussions at the Transport Council on 11 December.

5 December 2006

Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter dated 5 December 2006. Sub-Committee B considered your letter at its meeting on 11 December.

We were grateful to you for your detailed update on the progress of negotiations on this important Directive. We are pleased that the technical issues relating to the New Ship Inspection Regime have been resolved satisfactorily and that the Presidency compromises promise to secure a consensus in Council.

As the three key issues of banning vessels from EC ports, inspecting ships at anchorages and missed inspections remain open to discussion, and as the European Parliament may seek to make further amendments next year, we will maintain scrutiny on the Directive at this stage.

We look forward to receiving updates from you following the Council meeting on 11 December and the Plenary First Reading, which you expect to take place next April.

12 December 2006
PUBLIC CONTRACTS (9138/06)

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

Thank you for your letter of 20 June 2006 regarding Explanatory Memorandum 9138/06 on the Commission’s proposals to revise the remedies (public procurement) Directives (9138/06 COM (06) 195).

In your letter you commented that you were satisfied that the Commission’s proposal fitted broadly with the UK’s own policy objectives on securing fairer access to public procurement across the EU, but that it would be important that the approach taken on the introduction of the standstill period should be proportionate to its objectives. You asked to be informed on the progress of the negotiation in the Council and the Parliament and the following provides an update.

Significant progress has been made under the Finnish and German Presidencies. We are now at the stage where Member States have agreed that the German Presidency should exchange views with the European Parliament.

Under the Finnish Presidency four main issues were identified where Member States were either seeking clarification or questioned whether the approach in the Commission’s proposal was proportionate.

These concerned:

(i) the scope of application;

(ii) the treatment of direct awards, where these were allowed under the public procurement directives (2004/17/EC and 2004/18/EC);

(iii) the application of the standstill period to call-off contracts under frameworks, and

(iv) when the penalty of ineffectiveness should be applied.

On the scope of application, Member States have sought clarification that remedies should only apply to contracts covered by the underlying public procurement directives (2004/17/EC and 2004/18/EC). In the latest German Presidency text, it has been made clear, both in a recital and in Article 1, that the remedies rules only apply to contracts falling within the scope of the directives.

Questions have arisen in the negotiations about whether the standstill period should apply to contracts where a notice in the Official Journal of the European Union (OJEU) is not required by the directives, such as those contracts requiring extreme urgency or where only one supplier can perform the contract. In such circumstances, there would be nothing to be gained by requiring a standstill period. It has now been made clear in the Presidency text that there is no requirement to apply the standstill period where the underlying directives do not require publication of a contract notice in the OJEU.

Member States have also questioned, on the grounds of proportionality, whether there should be a standstill period for call-offs contracts awarded under frameworks following further competition. A standstill period will already have been applied when the framework agreement was originally let. The view of most Member States, including the UK, is that a second standstill period is not necessary and would undermine the advantages of using framework agreements, which were explicitly allowed for the first time in the public sector directive (2004/18/EC), because they are an effective procurement technique. It would be particularly disproportionate to apply a mandatory standstill period to those contracts which were below the threshold of the directives. A derogation for all contracts let under framework agreements has been provided for in the latest Presidency text.

Progress has also been made on clarifying the use of sanctions where the rules have been breached. Member States were concerned that ineffectiveness, which would make a contract unenforceable, would have to be applied automatically and that it would be applied for all breaches, without regard to how serious they were. The Presidency text makes clear that ineffectiveness is not automatically applied following a breach of the rules. The consequences of a contract being ineffective are also a matter for national law, which can provide for the cancellation of all contractual obligations or limit the scope to those obligations still to be performed.

Where ineffectiveness is not applied or where there was a breach of the procedural rules of the remedies proposal, proportionate alternative penalties, such as fines, would be applied. These changes meet the concerns of the Member States.

It remains to be seen how discussions with the EP will progress on these issues, but the dossier will be discussed at the Competitiveness Council in May and there will be a first reading vote in the EP in June.

21 April 2007

RAPID ACCESS TO SPECTRUM FOR WIRELESS ELECTRONIC COMMUNICATION SERVICES (6280/07)

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

Thank you for your Explanatory Memorandum dated 22 March 2007 which Sub-Committee B considered at its meeting on 16 April 2007.

We support efforts to adopt and apply a more flexible, technology-neutral and market-oriented approach to spectrum allocation and the initiatives proposed in the Commission’s Communication. We also support the Government’s and Ofcom’s efforts towards that goal.

We consider Member State co-operation in the development of this new approach very important and we note your reservations on the Commission’s involvement in the facilitation of this approach. We would be grateful if you could expand further on the reasons why you consider the Commission’s active involvement as unnecessary. We would also be grateful to you for an indication of the amount of spectrum made available through non-use by the military; and for an estimate of how much revenue the Government would re-invest in infrastructure should spectrum be auctioned.

We are content to clear this document from scrutiny.

19 April 2007

REDUCING CO₂ EMISSIONS (12389/06)

Letter from the Chairman to Malcolm Wicks MP, Minister of State for Energy, Department of Trade and Industry

Sub-Committee B considered this document, and your Explanatory Memorandum, at its Meeting on 16 October 2006.

We note and applaud the considerable success of the three schemes in reducing CO₂ emissions from passenger cars since 2003. We do however agree that efforts will have to increase substantially if the targets are to be met in 2008–09. We would be grateful to receive a copy of the Government Paper, published in September 2006, which your Explanatory Memorandum mentions. Could you explain to us which alternative approaches to the voluntary scheme the Government favour?

We will maintain scrutiny on this document at this stage.

17 October 2006

Letter from Malcolm Wicks MP to the Chairman

Thank you for your letter of 17 October, concerning the existing voluntary agreements between the European Commission and the European, Japanese and Korean vehicle manufacturers associations (ACEA, JAMA and KAMA) to reduce the level of CO₂ emissions from new passenger cars.

The progress made by car manufacturers under the voluntary agreements has significantly contributed to the reduction of CO₂ emissions from cars but as these agreements expire in 2008–09 the Commission are already considering future policy options to replace them. It is the Commission’s intention to issue, by the end of the year, a communication on a revised strategy to reduce CO₂ emissions from cars and it is likely this will include a preferred option to replace the current voluntary agreements. The Government wishes to proactively engage with the Commission ahead of their planned communication in order to help shape the direction of policy and to ensure that any future preferred option is right for British business and society.

I enclose a copy of the discussion paper that was published by the Department of Transport (DfT) on 13 September as requested (not printed). The discussion paper follows the commitment made by government in the Energy Review to continue to work with the European Commission and relevant stakeholders in developing successor arrangements to the current voluntary agreements when the existing agreements expire. It will be used to inform our discussions with the Commission and other Member States on what should replace the current CO₂ voluntary agreements.
The paper was published as an initial consultation to gauge stakeholder views and is open for responses until 8 November. Full details can be found on the DfT website.\(^{24}\) It specifically sets out five possible options including new voluntary agreements, three regulatory/mandatory options, which include trading, and the inclusion of car manufacturers in the EU Emissions Trading Scheme. The Government is interested to hear the views of stakeholders on how these different options might work in practice and also to receive and consider alternative suggestions that we have not included here. It is the Government’s intention to hold a full public consultation on this issue in due course.

There are of course other policy options for reducing CO\(_2\) emissions from road transport that are outside the scope of this discussion paper such as alternative fuels, better traffic management systems, eco driving and consumer choice. Government is pursuing these measures in accordance with the recommendations of CARS 21, which strongly endorsed adopting an integrated approach to tackle carbon emissions. An overall view of policy options to reduce carbon emissions from transport and other sectors can be found in the Climate Change Programme 2006.

1 November 2006

**Letter from the Chairman to Lord Truscott, Parliamentary Under Secretary of State for Energy, Department of Trade and Industry**

Thank you for your letter of 1 November 2006, Sub-Committee B considered your letter at its meeting on 27 November.

Thank you for sending us the Department for Transport’s discussion paper on the strategy. We will consider it carefully in the context of the forthcoming Communication setting out a preferred strategy which you expect the Commission to publish in due course.

We are content to lift scrutiny on this document, and await the forthcoming Communication.

We would be grateful to you for an update when the Government has completed its public consultation on this issue.

30 November 2006

**REDUCTION OF CO\(_2\) EMISSIONS FROM PASSENGER CARS AND LIGHT COMMERCIAL VEHICLES (6204/07)**

**Letter from the Chairman to Rt Hon Douglas Alexander MP, Secretary of State for Transport, Department for Transport**

Sub-Committee B considered this document, and your Explanatory Memorandum, at its meeting on 16 April 2007.

We recognise the importance, in terms of both competitiveness and the fight against climate change, of encouraging the greatest possible reductions in carbon dioxide emissions. However we would draw your attention to the recent report by Standard and Poor’s on the proposed new limit of 120g/km for such emissions in new vehicles. The report concluded that the proposals posed “a real risk to European automakers’ financial performance and credit-worthiness”. Do you consider that the automotive industry will have sufficient time to meet this target in the period 2009–12? Could you clarify whether the concern over the omission of any discussion of the proposal’s scope on the issue of tyre rolling resistance limits also applies to the other aspects of the proposal?

We will await the expected legislative proposals with interest. We are content to lift scrutiny on the Communication; but would be grateful to you for an update should any progress be made.

19 April 2007

ROAD SAFETY MANAGEMENT (13874/06)

Letter from the Chairman to Stephen Ladyman MP, Minister of State for Transport, Department for Transport

Sub-Committee B considered these documents, and your Explanatory Memorandum, at its meeting on 27 November 2006.

We agree with your view that the UK already has in place procedures, practices and requirements covered by the Directive so in the UK’s case enforcing the Directive’s provisions might be counter-productive.

In many other Member States, though, road safety management is not as strong as in the UK. As British citizens use continental roads for leisure as well as for commercial purposes it is worth ensuring that even if the Directive, as you propose, is not as detailed as the original draft, it should still include provisions effective enough to guarantee that the standards of road safety management across Europe are increased.

We agree that the Directive should allow for national interpretation and implementation but we feel that it is important for the Commission to have sufficient powers to intervene more strongly in cases where Member States lag behind in terms of road safety management.

We would be grateful to you to be kept informed of any developments in this area as they arise, but are content to lift scrutiny on the documents.

29 November 2006

ROAD SAFETY: VISIBILITY FROM LARGE VEHICLES (13869/06)

Letter from the Chairman to Stephen Ladyman MP, Minister of State for Transport, Department for Transport

Sub-Committee B considered this document and your Explanatory Memorandum, at its meeting on 4 December.

We share your view that the matter of visibility from large vehicles is a serious matter, and the objective of the proposal in reducing accidents is clearly worthy and should be wholeheartedly supported.

We do however note and share your concerns over the potential cost burden to industry, particularly in light of the discrepancy between the Government and the Commission over the estimated cost-benefit ratio. We would be grateful to you if you sent us the results of your stakeholder consultation as soon as they are available.

We also note your objection to the requirements in the Directive mandating how a Member State deploys its road safety publicity budget. Do you therefore believe this proposal to be consistent with the principle of subsidiarity?

We would be grateful to you for any updates on negotiations in the Council Working Group on this Directive and will maintain scrutiny at this stage.

6 December 2006

ROAD TRANSPORT FUELS (6145/07)

Letter from the Chairman to Stephen Ladyman MP, Minister of State for Transport, Department for Transport

Sub-Committee B considered these documents, and your Explanatory Memorandum, at its meeting on 5 March 2007.

We share your initial concerns over the potential implications of the amendments to Directive 98/70/EC. It is important that those Member States which have taken the most positive action to promote biofuels are not penalised, as you fear might be the case. Equally, any initiatives to significantly increase biofuel production should be accompanied with a rigorous assessment of the likely impact on biodiversity and agricultural land use. We would be very disappointed if, as your Explanatory Memorandum implies, this is not the case. The proposal does not appear to consider the possibility of importing biofuels from outside the EU. What is your assessment of the potential for such imports to contribute to the EU’s biofuel supply?

We note your view, expressed in paragraph six of your Explanatory Memorandum, that the regulation of fuel quality to achieve environmental targets “cannot be sufficiently achieved by Member States”. Can you expand on this explanation?
You write that you are “still considering” the implications of the draft Directive. We would be grateful to you for your full assessment of these implications as soon as you have made it; and for the result of your consultation of stakeholders.

We will maintain scrutiny on the proposal at this stage.

7 March 2007

ROAMING ON PUBLIC MOBILE NETWORKS (11724/06)

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

Sub-Committee B considered this document, and your Explanatory Memorandum, at its Meeting on 16 October 2006.

We share your concern that any action by the Commission in price capping does not have any unintended “spill-over” consequences for consumers using other mobile services. We recognise that this is an issue of great concern to the public, and will consider conducting an inquiry into the proposals in early 2007. In the mean time, we would be grateful if you kept us informed of any progress in negotiations, particularly regarding the Government’s favoured alternative of a “sunrise clause”.

We will maintain scrutiny on this document at this stage.

17 October 2006

Letter from Rt Hon Margaret Hodge MP to the Chairman

Thank you very much for your letter of 17 October on the EM 11724/06.

I am very grateful for your timely consideration of the Explanatory Memorandum on the Commission’s proposed Roaming Regulation and for your recognition of the importance of this dossier. I will certainly be happy to keep you informed on the progress of negotiations and on how our ideas (including the “sunrise” provision) are being received in Brussels.

At present the dossier is being considered in the Telecoms working group (under the Finnish Presidency) and has started its process through the European Parliament with initial “exchanges of views” in the ITRE and IMCO Committees planned for later in the month. At the Telecoms Council in December, at which I will represent the Government, we expect a further general discussion on the Commission text, with perhaps some questions posed by the Presidency. The EP timetable, with a first reading in plenary not expected until next May, has ruled out any form of political agreement this December. It also remains uncertain whether sufficient progress on agreeing a text could be made for there to be an agreement at the June Council under the German Presidency.

On the substance, the discussion in Council has tended to concentrate on three main aspects of the proposal; wholesale regulation (namely the type and level of “cap” on prices paid between operators); retail regulation (whether there should be a retail cap and how it should be calculated) and transparency (information available on pricing to consumers). The UK, while supporting the need for a robust wholesale price cap and greater price transparency, has duly tabled its retail “sunrise proposal” in the working group where it received welcome support from a number of delegations. Basically we believe regulated wholesale prices should deliver reduced retail prices without the need for formal controls.

We are, of course, furthering the UK position by liaising with other Member States and have already stated lobbying MEPs. I will forward a briefing note to you when this is finalised. We have also recently launched a consultation of the proposed Regulation, which I attach for your information (not printed).

I hope the above allows you and your Committee an oversight of the progress on this important dossier. I will, subject to your wishes, report further after the December Council when the intentions of the German Presidency on handling the Proposal may become clearer.

13 November 2006
Letter from the Chairman to Rt Hon Margaret Hodge MP

Thank you for your letter of 13 November 2006. Sub-Committee B considered your letter at its meeting on 11 December.

We are grateful to you for keeping us informed on the progress of negotiations in the Council and discussions in the European parliament. We look forward to receiving further updates from you on the progress of the negotiations in the near future.

Have you any estimate of the number of EU consumers who avoid roaming charges by purchasing SIM cards locally in another Member State when they travel?

Sub-Committee B is considering holding an inquiry into the proposals in early 2007 and will maintain scrutiny on the document at this stage.

12 December 2006

Letter from Rt Hon Margaret Hodge MP to the Chairman

Thank you very much for your letter of 12 December on this subject in response to mine of 13 November.

In my earlier letter I agreed to update the Committee on developments on the dossier and, in particular, on the discussions that took place at the EU Telecoms Council on 11 December. I hope this brief note will suffice. Essentially the Council was an opportunity for the Presidency to report on the deliberations that had taken place under their watch and to seek views of Member States on the detail of the Commission proposal. It was also an opportunity to consider how a compromise could be found that would enable the Council and Parliament to agree the dossier by the end of the forthcoming German Presidency.

The debate was both constructive and informative. It gave me an opportunity to outline the UK view and to back France in setting out a number of high-level principles on which an agreement should be based. I attach the paper that I and my French counterpart (Francois Loos) sent to Member States and the Commission just before the Council. Essentially our position is to agree with the Commission for a substantial and urgent reduction in roaming prices but to manage the process in such a way that neither undermines competition nor stifles innovation.

I am glad to report that the joint approach gained considerable support from other Member States, and may well be taken up (at least to an extent) by Germany in a possible Presidency text for next year.

I am confident that there is sufficient agreement in the Council for an acceptable solution to be found, though this will to some extent be determined by the views of the Parliament which will probably not become clear until around Easter next year. I will, of course, keep you up to date with developments.

Finally, your letter raised an interesting question concerning SIM cards being purchased locally to avoid roaming charges; a practice that we know is relatively commonplace. We will endeavour to provide you with details on the extent of this practice as soon as possible.

19 December 2006

Annex A

Principles on Roaming

France and United Kingdom believe that the following principles should form the basis of an efficient, balanced, consumer protective, regulation on roaming:

1. **Comprehensive information to the consumer on the retail tariffs.** This in line with the proposal of the Commission.

2. **A single price cap of the wholesale average tariff between any two operators based on a multiple of the average European termination rate enforced by National Regulatory Authorities.** The Commission proposed different price caps for the wholesale tariffs depending on the type of call (local call when roaming or international call). Our approach ensures a price reduction in the wholesale market, a protection for small operators and is easy for NRAs to enforce.

3. **A single control on average retail charges, covering all intra-Europe roaming calls made and received, defined in order to cover the retail costs of the operators.** This will be applied only to operators which have not voluntarily reduced their average prices below an agreed cap within six months and enforced by National Regulatory Authorities. The Commission proposed here different price caps based on the type of call and linked to the
different price caps for wholesale tariffs; we believe a single cap is simpler. It would be based on the average retail prices allowing competition in the offers between operators and better offers for consumers.

4. A “Consumer protection tariff” for those customers who want, as a free option to subscribe. This option will allow customers who do not want to choose from among the wide scope of commercial offers, that no minute will be charged to them, when roaming, above a certain price level.

5. A right for NRAs to exercise discretion and set the national retail price cap below the European price cap. In exercising such discretion, the NRA shall take into account the specific situation of the national market.

Further discussions in the Council and the Parliament will be necessary to define the adequate price cap levels and protection tariff.

Letter from the Chairman to Rt Hon Margaret Hodge MP

Thank you for your letter of 19 December 2006, replying to my letter of 12 December. Sub-Committee B considered your letter at its meeting on 15 January 2007.

We were grateful to you for your update on this issue, which will now be the subject of a short inquiry by Sub-Committee B. We look forward to hearing your views in more detail in person at a convenient point in the coming months.

We note the joint UK and French compromise proposal, and agree that it is very important that any measures to reduce roaming charges do not have the effect of stifling competition or innovation in the market. We await with interest the possible German Presidency compromise text which you expect. We would be grateful to you if you could send us a copy of such a text as and when it becomes available, as well as for an update on development in the European Parliament. We also look forward to receiving details of the Government’s estimate of the extent of the practice of the local purchasing of SIM cards to avoid the charges.

We will maintain scrutiny on the draft Regulation at this stage.

16 January 2007

Letter from the Chairman to Rt Hon Margaret Hodge MP

We understand that an informal Telecoms Council meeting will take place on 15 March, at which there will be an “exchange of views” on the draft Regulation (11724/06) to introduce price caps on mobile roaming charges in the EU.

As you are aware, the EU Internal Market Committee (Sub-Committee B) has just completed taking evidence for its inquiry into the Commission’s proposal. The Committee were grateful to you for the evidence which you provided on 26 February, and will produce a full report shortly. In the meantime, we felt that we should write to you, ahead of the informal Council meeting, with our emerging conclusions, based on the evidence we have received.

The first issue we have found it necessary to address is whether there is a problem with the current state of mobile roaming charges. Are these charges, in the words of Commissioner Reding, “unjustifiably high”; and if so, is the market alone capable of remedying this, or is a Community-level intervention required?

In attempting to answer this question, we were struck by the lack of coherent data on the real cost of roaming. The evidence provided to us does show that Mobile Termination Rates quoted to us are considerably higher than roaming costs. Whilst this evidence is circumstantially compelling, it is by no means comprehensive proof of unjustifiably high charges as it does not capture the full costs of roaming. However further weight to the argument that roaming charges were higher than they needed to be is provided by an analysis of the actions of the telecoms industry since the threat of this Regulation. Some price falls have been observed but these changes are not uniform for all customers on all networks. The industry is a changing scene and there is a code of practice agreement in place, although it is unclear how effective this has been so far. It certainly appears from some of the larger price reductions that the operators’ margins of profit were much larger than originally understood.

Based on the evidence we have received, we conclude that there is a need for some degree of legislation in the market in order to achieve a reduction in the cost of roaming that would benefit consumers but not hurt the industry. The nature, spectrum and duration of the legislation are discussed below.
We recognise that roaming is fundamentally of a cross-border nature. By definition, it involves operators and consumers in more than one Member State. In this context National Regulators face inherent difficulties dealing individually with the cost of roaming and adopting and implementing measures, under their own remit, to reduce it. Furthermore, there seems to be agreement that the cost of roaming constitutes a barrier to the functioning of the Single Market both in terms of the operation of the mobile telephony market but also on the extra costs incurred on SMEs using mobile telephony services. A co-ordinated approach at Community level is thus required, albeit one that takes into consideration different geographical, demographic and technical characteristics in each Member State.

We are aware that the adequacy of Article 95 as a legal base for the proposed Regulation has been contested by Orange and Vodaphone. There are serious arguments which have to be addressed and we hope that these are matters to which the Government are giving the closest attention.

As matters currently stand, we have identified four key areas on which we would like to comment: wholesale regulation; retail regulation; the proposal for a sunset clause; and data regulation.

We strongly support the need for wholesale regulation. We believe that an approach based on average Mobile Termination Rates is the most straightforward option; and there appears to be a general consensus that the German Presidency’s suggested wholesale cap of 30 eurocents per minute is a sensible level, and one which will be workable for the industry.

We are less clear on the case for retail regulation. We have yet to receive convincing evidence that the combination of wholesale regulation with effective retail competition will not deliver the desired benefits to the consumer. We believe that, rather than introduce full retail regulation at present, it would be more appropriate to introduce a consumer protection tariff, set at an absolute level to protect the most vulnerable consumers, those who travel infrequently. We support the German Presidency proposal that such a tariff be based on an opt-in model for existing customers, and an opt-out model for new customers.

We believe that it would only be wise to introduce wider retail regulation at a later period, if there had not been a sufficient reduction in general roaming charges as a result of the combination of wholesale regulation and the introduction of a consumer protection tariff. This would, in effect, be a return to the “sunrise clause” advocated by the United Kingdom and France in the December Council.

We are of the view that the Regulation should be time limited in some way, and that it would be appropriate for the Regulation to expire through a “sunset clause” in three years time unless a convincing case is made for it remaining in place. This case would have to be supported by the collection and analysis of comprehensive data on roaming costs and prices across the EU. This work would have to be carried out by National Regulatory Authorities, along the lines of consistent criteria set by the Commission.

We are aware that political support for both the sunrise and sunset clause appears to have waned in the most recent negotiations on the draft Regulation, but would endorse firmly their continued consideration.

Finally, the majority of our witnesses focussed on the issue of voice roaming. Anecdotal evidence appears to suggest that, if there are currently market abuses above costs, they exist to a greater degree in the data market. There is at present insufficient hard evidence on the costs of data roaming, and we believe that uncovering the costs should be a priority in the cost study mentioned above. Data is likely to become an ever more important sector of the market, and once the research has been carried out, the Commission must consider the extension of regulation to this class of products.

We would welcome a detailed report from you on the discussion in the informal Council on 15 March, and we will be writing in similar terms to Commissioner Reding.

8 March 2007

Letter from Rt Hon Margaret Hodge MP to the Chairman

Thank you for your letter of 8 March, in which you set out the initial conclusions of your comprehensive inquiry into the Commission’s draft Regulation on International Roaming. This was very timely, just ahead of the informal discussions I had with other EU Ministers in Hanover on 15 March.

I will not comment here in detail on your initial conclusions, as I look forward to your comprehensive Report later in the month. I am greatly encouraged with your initial conclusion; especially with respect to your endorsement of a single average cap at the Wholesale level and a Consumer Protection Tariff (CPT) offered

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25 We were sent two opinions on this issue, one from Sir Francis Jacobs QC and David Murray, dated 16 October 2006, the second from Claus-Dieter Ehlerman, dated 27 March 2006.
to existing customers on an opt-in basis. I would, however, urge you to look again at the case for an average retail cap, offering both additional protection for those customers deciding not to take the CPT, but also encouraging operators to bring forward innovating and competitive roaming packages.

Turning to the Informal Ministers meeting (on which there were no formal Conclusions or Report) I will briefly outline the lunchtime discussion on the Commission’s Roaming proposal and the afternoon exchange on mobile Television. The meeting was held at the CeBIT Fair in Hanover and was preceded by an opening reception, the evening before, hosted by the German Chancellor.

During the lunchtime discussion (which was only attended by Ministers and Heads of Delegations) there was an overall consensus that regulation at the European level was necessary and urgent since rates for roaming services significantly exceed the costs and are thus a burden for European citizens. While the prime objective of the Regulation would be to help bring about a speedy and perceptible reduction of roaming charges for all consumer groups; it was also recognised that competition among the operators and the incentives for innovation must not be endangered.

Ministers also agreed that the improvement of rate transparency for the consumer was an important element toward solving the problem and also considered that a Consumer Protection Tariff (that had to be offered to all customers) was an essential element of the package. Finally, it was also considered important that operators should be able to offer other innovative price options, in order to ensure that consumers enjoyed a wide range of possible services; though there were differing views on the role of an “average tariff cap” (which, as you know, we feel is important) in achieving this.

As a result of the discussion on Roaming, the Presidency have convened additional official level session to try and secure a way forward, particularly as regards the Consumer Protection and Average Tariffs in the next week or so; this perhaps helping the European Parliament to focus on their own discussions. Currently there are still a majority of countries who support (like you) an opt-in for the CPT and thus I am confident that an acceptable outcome, meeting our broad objectives, can be secured.

The afternoon session at Hanover concentrated on Mobile TV. There were brief presentations from competing business groups in Germany (on the DVB-H and DAB standards) and then three Ministers (including myself) gave brief overviews on developments in their own countries. I, along with my Italian and Finnish counterparts, stressed the real potential for this business sector but also that it was a market where little intervention by national Governments or the Commission was required. I particularly noted that it would be a mistake, given the rapid emergence of different business models, to back one standard over another.

I will, subject to your wishes, keep you informed of developments on the Roaming dossier; and will indicate to you how the balance of negotiation lies ahead of the Council on 7 June.

29 March 2007

SAFER USE OF THE INTERNET (14933/06, 14937/06)

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

Sub-Committee B considered these documents, and your Explanatory Memorandum, at its meeting of 29 January 2007.

As we noted in our recent inquiry into the Commission’s proposed Audiovisual Media Services Directive, the protection of minors from harmful and illegal content online has a continued and growing importance. As a consequence we share your support for these schemes. We are aware of the excellent results achieved in the UK by the Internet Watch Foundation and share your support of the extension of such self- and co-regulated schemes at a European level.

We are however concerned at the poor level of awareness of the hotlines and “awareness nodes” detected by these evaluations; given the fundamental importance awareness holds. We would be grateful if you could indicate to us which specific educational initiatives the Government will recommend to the Commission.

We are content to lift scrutiny at this stage.

2 February 2007
INTERNAL MARKET (SUB-COMMITTEE B)

SERVICES DIRECTIVE (8143/06)

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

Thank you for your letter of 24 July 2006. Sub-Committee B considered your letter at its meeting on 9 October.

We are grateful to you for your update on the progress of the Services Directive through the European Parliament, and look forward to a further update in advance of the Second Reading. We also look forward to receiving your response to our report, The Services Directive Revisited, which was published on 24 July.

10 October 2006

Letter from Rt Hon Ian McCartney MP to the Chairman

Thank you for your letter of 10 October, concerning my letter on preparation for the Second Reading in the European Parliament. By now you will have already received my response to the points made in your report entitled “Services Directive Revisited”.

Regarding the Second Reading, it appears, by gauging opinion from my meetings with key MEPs, that the majority of MEPs wish to avoid re-opening the debate on the Services Directive, in recognition of the compromises made by the Council in order to achieve an acceptable result. I will continue to urge MEPs against amending the Directive, so that we do not lose vital substance at the final hurdle. The European Parliament’s Internal Market and Consumer Protection Committee, which leads on the directive, made the welcome decision not to propose any changes to the text at its vote on 23 October.

I now expect the second reading vote to take place on 15 November and will write again then to inform you of the outcome.

31 October 2006

Letter from Rt Hon Ian McCartney MP to the Chairman

Further to my letter of 19 October 2006 responding to the EU Internal Market Sub-Committee’s report on EM 8413/06, and my letter of 31 October, I am writing to update you on the outcome of the European Parliament’s vote on the second reading of the Services Directive, which took place on 15 November 2006.

The Parliament voted through three technical amendments (related to comitology—which are attached)—which means that the political agreement reached at the 29 May Council, which the UK strongly supported, has been preserved. The Directive continues to achieve a good balance between opening up EU markets to service providers whilst ensuring standards are maintained in important areas such as health and safety and employment law. Pressure to dilute the liberalising elements of the Directive were resisted and the scope remains unchanged. I am sure that the Committee will agree that this is an excellent result.

We expect the Directive incorporating the European Parliament’s three second reading amendments to be formally adopted by the Council in the very near future, possibly at the 4 December 2006 Competitiveness Council and published soon thereafter. There will be three years to transpose the Directive.

As the Committee recognised, implementation will be key to reaping the huge benefits offered by the Services Directive and my officials have begun working with government departments, the Commission and other Member States to try to ensure there is EU-wide consistency in the approach and effective transposition. I should like to take this opportunity to respond to Lord Grenfell’s question in his letter of 3 November 2006. The implementation period was extended in recognition of the large task ahead. The UK is well advanced in its implementation planning and we are, with the Commission, encouraging other Member States to start the process now and build on the current momentum. We have already begun working with some Member States and expect to work closely with all in the coming year.

The Committee is well aware that negotiations on this Directive were turbulent. We are now at the stage where formal adoption is imminent, and although all Member States made compromises, I am pleased that we have achieved a text which is genuinely beneficial to the EU, and particularly to the UK, service sector.

I am very grateful to the Committee for their swift and thorough examination of the draft Directive and I will of course ensure that the Committee is alerted to any future developments including the publication of the final text.

24 November 2006

**Letter from the Chairman to Rt Hon Ian McCartney MP**

Thank you for your letter of 24 November 2006 which Sub-Committee B considered at its meeting on 4 December.

We were grateful to you for your updates following the European Parliament’s second reading of the Directive, and pleased that only technical amendments were made. As you will have gathered from our report, we share your assessment that “implementation will be key” to the success or failure of the Directive in delivering genuine progress on the liberalisation of the EU’s services sector.

We are therefore reassured by your promise to work closely with the Commission and with other Member States to ensure that the Directive is evenly and thoroughly implemented across the EU. In particular, it is vital that Member States are not rewarded for reluctance or half-measures in establishing the points of single contact for service providers established in other Member States. Unless these are set up properly, the Directive will not provide for a single market in any meaningful sense.

We would like to extend our thanks to you, and through you your Department, which has kept the Committee informed with the “turbulent” progress of the Services Directive in exemplary fashion.

We share your hope that this Directive will constitute a genuine step forward, and although we regret some of the revisions which the current text embodies, we recognise that compromise was necessary.

We would be grateful to you if you could write to us further after the December Competitiveness Council.

6 December 2006

**Letter from Rt Hon Ian McCartney MP to the Chairman**

Thank you for your letter of 6 December 2006. I note with gratitude your appreciative remarks.

You will be pleased to learn that the Directive was officially published on 27 December 2006. We can provide a copy of the final text to the Clerk of Sub-Committee B.

The implementation project is now underway and the DTI will be consulting relevant government departments, competent authorities and interested parties throughout the duration of the project to ensure we implement effectively.

The Committee may wish to be aware that the European Commission are planning a series of workshops for Member States on specific aspects relating to implementation. The first workshop, is scheduled for mid-February on the “points of single contact”. The UK will be one of the lead speakers. These workshops will be a good opportunity to exchange experience between Member States on the requirements and challenges associated with the implementation of points of single contact and to encourage the development of best practice.

The DTI will shortly be launching a study involving a wide spectrum of UK and European businesses on what the Directive’s requirements mean in practical terms and what our users would find most useful from both the UK Points of Single Contact and those elsewhere. The results will help us to develop an effective and useful website and will be used in our regular contacts with the Commission, other Member States and stakeholders at UK and EU level. We shall also be encouraging other Member States to undertake some similar work with their stakeholders and potential users.

The Department will continue to update you on developments at key stages of the project.

15 January 2007

**Letter from the Chairman to Rt Hon Ian McCartney MP**

Thank you for your letter of 15 January 2007, replying to my letter of 6 December 2006. Sub-Committee B considered your letter at its meeting on 5 February.

We were very grateful to you for your update on the Services Directive, which we have followed particularly closely as you are aware. As we have noted before in our follow-up report, The Services Directive Revisited, as well as in our correspondence with you, the implementation of the Directive by Member States, particularly of the points of single contact, will be key to its success or failure.
We look forward to hearing updates from you on the progress of the cooperation between the Commission and interested parties, and will liaise with the House of Lords Select Committee on the Merits of Statutory Instruments as and when secondary legislation arises in the UK.

7 February 2007

SHORT SEA SHIPPING (11732/06)

Letter from the Chairman to Stephen Ladyman MP, Minister of State for Transport,
Department for Transport

Sub-Committee B considered these documents, and your Explanatory Memorandum, at its meeting on 9 October 2006.

We are pleased that in your view the Commission has made good progress since 2003 to implement the proposed measures, and share your desire to encourage and promote Short Sea Shipping.

We note your doubts over the necessity of Action Point 3, and your view that any further standardisation should be industry-led. Do industry representatives share your view?

We will maintain scrutiny on this proposal at this stage.

10 October 2006

Letter from Stephen Ladyman MP to the Chairman

Thank you for your letter of 10 October concerning the above Communication and the associated Explanatory Memorandum.

Your Committee asked whether industry shared the Government’s view that any further standardisation of loading units should be industry-led. The Government’s position is based on the industry views expressed in a widespread UK consultation when the Commission issued its original proposal for an Intermodal Loading Units Directive in 2003 (Explanatory Memorandum 8523/03 and 9265/04). Industry took the firm view that there was no need for additional EU standards for such containers as existing standards set through international bodies such as ISO and CEN were sufficient. There is no indication that they have changed this view. We believe that industry is best positioned to develop containers to suit market needs. An example of this is the increasing use of non standard, 45 foot long containers shaped to meet the constraints of road vehicle dimensions. We will, of course, review industry’s position with their representatives, if the European Commission does decide to resurrect its proposal in future.

10 November 2006

Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter of 10 November 2006, Sub-Committee B considered your letter at its meeting on 27 November.

We were grateful to you for your clarification of the views of UK industry, based on your consultation in 2003, and for your assurance that industry will be consulted further should the Commission revisit its proposal to standardise loading units further. We share your view that “industry is best positioned to develop containers to suit market needs”.

We are content to lift scrutiny on these documents.

29 November 2006

SINGLE MARKET FOR CITIZENS (6181/07)

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

Thank you for your Explanatory Memorandum dated 22 March 2007 which Sub-Committee B considered at its meeting on 16 April 2007.

The Committee welcomes the initiatives to renew and strengthen the operation of the single market. The Committee will monitor discussions within the Council and between Member States and the Commission ahead of the Review of the Single Market to be published in autumn. The Committee is currently considering
whether to conduct an inquiry into the review of the single market, but is content to clear this document from scrutiny at this stage.

We note that role of the single currency in the single market features strongly in the Commission’s Communication. What is your assessment of the importance of the euro to the functioning of the single market?

19 April 2007

SINGLE MARKET FRAMEWORK FOR INVESTMENT FUNDS (15484/06)

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

Sub-Committee B considered this document, and your Explanatory Memorandum, at its meeting on 8 January 2007.

We would be grateful if you could clarify your view on the consistency of this White Paper with the subsidiarity principle given its references to tax policy, which as your EM notes, is the preserve of Member States and not the Community. Your EM does not contain any comment as to the proportionality of the measures suggested by the White Paper; do you consider these measures to be proportionate?

We share your welcoming of the White Paper, and believe that it is important for the regulatory framework to be updated and where possible simplified in order to create a more favourable environment for investors. We will await the subsequent legislative proposals, which you anticipate in Autumn 2007, and are content to lift scrutiny on the document.

In the meantime we would be grateful for the opportunity to meet with you informally in the coming months at your convenience to discuss this and other matters of emerging significance for financial markets in the UK, and will be in touch with your officials to arrange such a meeting in due course.

9 January 2007

Letter from Ed Balls MP to the Chairman


You ask first for clarification on the consistency of the White Paper with the subsidiarity principle given its references to tax policy. In the White Paper in its comments on the taxation of cross-border UCITS mergers, the Commission includes within the text an implicit recognition of Member States’ competence in this area when it rejects the idea of tabling proposals for tax harmonisation and acknowledges that these would “require unanimous support of 27 Member States”. The Commission then goes on to say that it proposes to produce an interpretative Communication building on relevant case law of the ECJ. This intention of the Commission to produce a paper does not in itself give rise to potential issues of inconsistency with the principle of subsidiarity. As far as the substance of the Communication in concerned, the document will of course be the subject of an Explanatory Memorandum when it is published.

You also ask whether the Government believes the proposals to be proportionate. We believe that they are. The common theme of the Government’s negotiating position on possible amendments to the UCITS framework has been that rather than root and branch reform, we should focus on small, targeted amendments to the existing EU law to address specific problems with the functioning of the current framework. This is precisely what the Commission is proposing and we are therefore content that its proposed legislative amendments are proportionate.

I also note your request for a meeting and would be happy to accept. Our offices will be in touch in due course.

31 January 2007

Letter from the Chairman to Ed Balls MP

Thank you for your letter of 31 January 2007, replying to my letter of 9 January. Sub-Committee B considered your letter at its meeting on 19 February.

We were grateful to you for confirming that, in your view, the proposals in the White Paper are both proportionate and consistent with the principles of subsidiarity. We look forward to receiving the Commission’s Communication on ECJ case law under a further Explanatory Memorandum.
We were also grateful to you for agreeing to meet with the Committee at some point in the near future. The Clerk to the Sub-Committee will contact your private office shortly to arrange a suitable date.

26 February 2007

SUPPLY CHAIN SECURITY (6935/06)

Letter from Rt Hon Douglas Alexander MP, Secretary of State for Transport, Department for Transport to the Chairman

In line with the undertaking in my letter of 26 May 2006, I am writing to update your Committee on the progress of this dossier, which proposes the establishment in all Member States of a voluntary system to provide a quality label of “secure operators” to enhance the security of the supply chain. In short, since you received my letter, work on the dossier has been put on hold by the Commission, and this letter summarises how we have reached that position.

Since the EM an EU Working Party on Land Transport, comprising representatives of all Member States, has met twice to discuss the principles rather than the details of the proposals.

As you know, the UK had some fundamental questions about the proposals which were set out in the EM. Most crucially we wanted to understand what terrorism threat and risk these proposals were designed to mitigate and what added security value they would provide, given the existing security regulation of key elements of the supply chain. These considerations were particularly important when considering the proposed application of the proposed regulation to domestic-only traffic and whether the current “known shipper” regimes in aviation, maritime, and Channel Tunnel freight security should be recognised as fulfilling the requirements.

Furthermore, we were fully aware of the concerns of industry, particularly of small and medium-sized enterprises, over the costs and benefits of the scheme which we and other Member States highlighted at meetings of the Working Party on Land Transport.

The comments made by other Member States at those meetings showed that many shared our reservations and indeed the stance of some, fuelled by industry concerns as to the need, cost and practicalities of such a regulation, became far more negative as discussions went on.

In recognition of these fundamental concerns the Presidency proposed that Member States wait until after the publication of the report of this dossier of Jeanine Hennis-Plasschaert, the Rapporteur of the European Parliament Transport Committee, before considering the detail of the proposals. Member States agreed unanimously. The UK briefed Ms Hennis-Plasschaert and UK MEPs in advance of the Transport Committee’s consideration of the dossier which was scheduled for 21–23 January 2007. However, having considered the dossier, the Rapporteur wrote to Commissioner Barrot asking for the proposal to be withdrawn and reconsidered by the Commission. Commissioner Barrot agreed with the Rapporteur to put the dossier “on hold” pending further internal consideration of the proposal by the Commission.

As a result I understand that there will be no further Council or Parliament discussions on the proposal for the foreseeable future. You will wish to note that since the proposal has not been withdrawn the Commission has retained the option of reactivating the dossier, presumably recast, in the future.

In light of this, we have not yet concluded a Regulatory Impact Assessment (RIA). We still plan to do a full RIA if the Commission decides how to proceed with the dossier.

Separately, I am aware that some Committee members may have seen reference to a consultant’s report on this dossier in the Sunday Times of 19 November. I can reassure you that this report is not new information. To inform their drafting of the proposals, the European Commission commissioned an external impact assessment from consultants Det Norske Veritas (DNV), and it is this report that is referred to in the article. The report was published on 26 October 2005 and is available at [http://ec.europa.eu/dgs/energytransport/security/intermodal/doc_2005_finalreport_impact_assessment_transport_security.pdf](http://ec.europa.eu/dgs/energytransport/security/intermodal/doc_2005_finalreport_impact_assessment_transport_security.pdf).

This impact assessment informed the European Commission’s own analysis and was published in the Commission’s Staff Working Document SEC(2006)251 which was included in EM 6935/06.

I will continue to keep you informed of the progress of this proposal.

11 April 2007

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INTERNAL MARKET (SUB-COMMITTEE B)

Letter from the Chairman to Rt Hon Douglas Alexander MP

Thank you for your letter of 11 April 2007. Sub-Committee B considered your letter at its meeting on 23 April. We were grateful to you for your update on the draft Regulation and for your explanation of why the proposal has been put “on hold”. Provided that, should it re-emerge either recast or through any other means, the Government would resubmit the proposal for scrutiny, we would be content to lift scrutiny at this point. As it stood, we shared your numerous concerns over the draft Regulation.

24 April 2007

TELEVISION WITHOUT FRONTIERS (12348/06)

Letter from the Chairman to Shaun Woodward MP, Parliamentary Under Secretary of State, Department for Culture, Media and Sport

Sub-Committee B considered this document, and your Explanatory Memorandum at its meeting on 23 October. As you will be aware, this area is of great interest to the Committee, which is currently conducting an inquiry in the Commission’s proposal for a Directive amending Council Directive 89/552/EEC (Television Without Frontiers).

We note and accept your arguments with regards to the Commission’s criticism of the UK’s performance in the context of the targets set by Articles 4 and 5, and also note that this assessment covers the review period 2003–04, and may now be outdated. We agree that some of the criteria are clearly impractical when applied to small, specialised channels. What pressure can the Government apply to improve the existing criteria? Can you confirm that UK public service broadcasters meet the targets set by Articles 4 and 5?

We are content to clear the document from scrutiny.

26 October 2006

Letter from the Chairman to Shaun Woodward MP

As you will be aware, Sub-Committee B is conducting an inquiry into the Commission’s proposed revision of the Television Without Frontiers (TVWF) Directive. We have completed taking evidence and will produce our final report in December. For the moment, we thought it might be helpful to let you know of certain concerns we have over the proposal, in the light of the evidence we have received, ahead of the Council Meeting on 14 November, where we understand agreement to a General Approach is sought by the Presidency.

The purpose of the original 1989 Directive was to create and maintain a single market in television broadcasting. We recognise that the context at that time was of large television companies which enjoyed near-monopoly status in Member States, limited consumer choice and no internet. The central elements of the original directive were, and should continue to be, two-fold: to ensure that television services could be delivered in the EU as a single internal market and on the basis of the Country of Origin principle. To this end there were certain regulations relating to consumer protection. We feel now that there is further need to employ the minimum necessary regulation while providing allowance for the protection of minors from harmful content, and for the control of material seeking to incite hatred on the relevant grounds.

In updating the Directive, we assume that current thinking on EU legislation would be to adopt a framework which employs the lightest possible regulatory touch necessary to achieve the objectives of the legislation. The revised Presidency text of 20 October endorses the principles of self and co-regulation in these sectors, and we warmly welcome this move. We believe that, where consistent with Member State law, self-regulation is the best possible option especially in an area where technology and markets are changing continuously.

We are concerned that by adopting a terminology relating the directive to Audiovisual Media Service, there may be a danger that legislators are drawn into a desire to regulate the internet and other new media services. On the evidence we have received during our inquiry, this would in our view be a grave mistake. These services already provide a strong single internal market across the EU and indeed often globally. There appears to be little or no purpose in seeking to regulate these services in order to achieve a single market which already exists across media. No evidence has been provided that suggests otherwise.

As far as public interest protection is concerned, we noted that the eCommerce Directive already covers the point-to-point, on-demand services which it regards as “information societies”. The Directive requires internet services providers to remove illegal content when it is reported to them, and through derogations to the Country of Origin Principle, it permits Member State governments to block content originating from other Member States on grounds of public policy including health, security and consumer protection.
We recognise, as the evidence before us demonstrated, that the distinction between television and the internet or other new media services is becoming blurred in two ways. Consumers are freely exercising choice across these media and the advertising market also views these varying markets as to a degree inter-competitive. We do not believe that it is the role of regulators to seek to protect businesses or providers that are challenged by the emergence of new developing technologies.

Nevertheless, the evidence appears to be that there is still a recognisable television market, in what one might term a traditional sense, being broadcast and available to the population as a whole for simultaneous viewing, often free at the point of use. The evidence to us in general strongly supported liberalising the quantitative rules on advertising on television services in recognition of the vastly increased consumer choice and the availability of new technology to enable consumers to decide how much advertising they want to see as well as time-shift technology. We held concerns over the 35 minute rule in the Commission’s original draft Directive, and recognise that the move to a 30 minute rule is a tentative step in the right direction. The evidence to us on product placement was mixed, and we recognise the difficult issues involved here, especially as regards the potential impact on editorial control in programme production.

The evidence to us, taken as a whole, very strongly suggested that it remains useful to have a directive that deals solely with what is conventionally termed television, but that it should not seek to go beyond that. In one sense, we recognise that the Presidency draft of 20 October represents a significant improvement on the scope of the original Commission draft, which in our view was excessively and dangerously wide. The Presidency draft nevertheless does seek to extend regulation into the internet and other new media services and seeks to limit this incursion by defining certain “non-linear services” as on demand services which are described as having the characteristics of “television-like” services (Recital 13a). The implications of this are set out in Article 1(aa). We have received little evidence that convinced us that this incursion into the internet and other new media services is necessary to achieve a single internal market in the EU, nor desirable on any other grounds bearing in mind the existence of the e-commerce directive.

We note that the Presidency draft seeks to moderate the implications of this incursion beyond television services by limiting the scope and intensity of the regulations proposed for those “non-linear services”. Insofar as this is a considerable improvement on the Commission’s draft, we welcome this. Nevertheless, we received no evidence to suggest that the current Directive needs to be extended in scope into the internet and other new media services in order to achieve the limited objectives of the revised Presidency draft. Existing laws appear to protect important public interest matters such as the protection of minors, which we strongly endorse.

In our view, having reflected carefully on the evidence before us, extending the Directive into the internet and other new media services has two substantial dangers. By identifying some of these services as “television-like”, it may lead some to conclude that eventually “like-services” should be regulated in a “like-manner”, i.e. a perfectly “level playing field”. The Presidency draft seeks to identify and propose the regulation of “television-like” services but proceeds to regulate them differently. As we note above, if they are to be included at all we agree that they must be regulated differently, but the wording and definitions in the Presidency text may encourage the idea that they can and should be regulated in the same way as television. We would consider such a move now or in the future to be a grave error.

There is a second problem with extending the draft Directive into non-television services, such as the internet and other new media services. It might be taken as an encouragement that it is desirable to extend regulation into these services more widely and eventually to go beyond “television-like” services into other parts of the internet and new media. Given the practical difficulties in defining, regulating and enforcing a Directive based on “television-like” services any further incursion into the internet and other new media services will be fraught with even greater difficulties and, as we have indicated above, is unnecessary in order to secure a single internal market.

In summary, the Presidency draft to be considered next week is an undoubted improvement on the Commission draft. But based on the evidence before us in our inquiry, we believe that it has been a mistake to seek to extend the scope of the existing Directive into the internet and other new media services. We agree that, with the present state of technology, and in the communications market place, there is still an identifiable and important television market and that certain aspects of television do need to be liberalised in the face of greatly increased consumer choice and new technology. Going beyond television into the internet and other
new media services is in our view unnecessary to achieve the fundamental objectives of the legislation in this area. Moreover commencing the process of incursion into these areas opens the door to significant problems in the future and in any case may prove difficult to enforce, other than in a way which interferes unnecessarily with the business model of a new media service provider and creates for them an un-level playing field.

8 November 2006

Letter from Shaun Woodward MP to the Chairman

Thank you for your letter of 26 October confirming that you are content to clear this document from scrutiny. I can confirm that the UK public service broadcasters have exceeded the requirements of Articles 4 and 5. You may be interested in the attached summary report which was prepared by Ofcom on the position of the public service broadcasting analogue and digital terrestrial channels. This summary showed that for these channels in 2004, the overall proportion of European works was 85% and of independent European works it was 45%.

You asked what pressure the Government can apply to improve the existing criteria for the types of channels which are expected to meet the TVWF European production quotas. The Government’s approach has been to keep a watching brief on this issue and to make sure the position does not worsen.

So far as the current negotiations on the revision of the Directive are concerned, there have to date been no moves to increase the current quotes for “linear” (ie television broadcasting) services or to remove the existing flexibilities. We are pleased about that, but our primary objectives in this negotiation have been concerned with its scope, the country of origin principle and the limits which are set on television advertising.

Member States’ approach to the quotas varies. While Germany, for example, would like to see the quotas for non-linear services removed, France would like to see them increased and would even like to include industry levies.

22 November 2006

Annex A

ARTICLES 4 AND 5 OF THE TVWF DIRECTIVE

Summary Report Prepared by OFCOM on the Performance of the PSB Channels

Public Service Broadcasting Channels

Statistical Statement Part I

<table>
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<th>UK Broadcaster</th>
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<th>AS (%) TQT</th>
<th>IP (%) TQT</th>
<th>RW (%) IP</th>
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<td>74</td>
<td>21 22</td>
<td>99 99</td>
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channels for which no data were communicated (NC) 0 0 0 0 0 0
channels below the thresholds (50% EW/10% IP) 0 0 0 0 0 0
channels above the thresholds (50% EW/10% IP) 13 13 13 13 13 13
number of channels increasing proportions over this reference period 6 11 3
number of channels decreasing proportions over this reference period 4 2 6
number of channels with stable proportions over this reference period 3 0 4
general trend 2 9
compl rate IND 2 100% 100% 100% 100% 100% 100%
average IND 1/4 85 85 43 45 89 89
growth 0 2 0.692

Key
EW European works/TQT (cf Article 6 TWF Directive)
IP European works made by independent producers/TQT (cf Article 5 TWF Directive)
BW Recent European works by independent producers/IP (cf Article 5 TWF Directive)
TQT Total qualifying transmission time (excluding news, sport events, games, advertising, teletext services and teleshopping)
AS Audience share of channels
NC Non-reported channels for which no data were communicated to MS (will be calculated with 0%)
NO channels not-operative during the period concerned
Type Channel type: public service, commercial, niche, interactive, near video-on demand, teleshopping, news, sports, other
TM Transmission mode: (digital) terrestrial, satellite, cable, ASDL
EXC channels exceptionally exempted (cf footnote 7, COM (2004) 524) or discharged under “where practical” clause (specific reasons to be given by MS)
E Audience share figures not freely available. Estimated at less than 1%

Letter from Shaun Woodward MP to the Chairman

Thank you for your letter of 8 November.

I was grateful for the opportunity to give evidence to your Committee’s Inquiry on this issue last month, and I am equally grateful for this early sight of its possible conclusions. We entirely share the reservations which you have expressed.

Successive drafts of the proposals to amend the TVWF Directive have tried to incorporate the concepts of light touch controls and co- and self-regulation which must, as you say, be at the core of our approach to EU legislation. These good intentions were of course very much belied by the substantive parts of the draft amending Directive which the Commission introduced just under a year ago, in particular in terms of its imposition of sectoral controls onto “on-demand” new media services, whether delivered over the internet or over mobile or other networks.

The Presidency draft of 20 October represented a significant improvement as compared with the Commission’s initial proposals, in particular as regards the scope of the Directive. When the Education and Culture Council met on 13 November, it reached a general approach on a slightly revised text but this had the same salient features as the 20 October version.

We now therefore have an agreed Council text which restricts the extension of scope of the Directive to those services, in particular video-on-demand, which provide a service closely similar to television broadcasting and compete in the same market. The text does not embrace services such as weblogs, online games, or user-generated material.

Our having made this proposal in the Council meant that we were to a large extent leading debate on this issue. I am convinced that, had we not done so, the Council would have agreed a scope for the revised Directive which would have been considerably more damaging to both UK and general EU interests.

The European Parliament (EP) will be discussing the Directive in plenary session in mid-December. We are continuing to have discussions with MEP’s as the EP’s position develops, but as things stand I am very much encouraged by the fact that the proposals which are being put to this plenary session by the Education and Culture Committee (which is taking the lead on this Directive) propose a very similar scope to that which the Council has now agreed.

I attended the Council on 13 November, and spoke in favour of it reaching a general approach on this basis. The Government of course very much shares the reservations you express in your letter about the scope of the Directive being extended. We expect that we would be able to implement this text in the UK without imposing the kind of burdens on providers which the original Commission proposals would have implied.
I do however take the point which you have made about the Directive encouraging further undesirable incursions into regulating the internet, and it is of course very much our intention that it should not do so. The Council’s text contains a review clause (in Article 26). We will need to argue strongly that these periodic reviews provide an opportunity for the progressive loosening and dismantling of the controls—as opposed to the imposition of new ones—as the technology and the market develops.

I should mention two other key aspects of the new text. First, there is a new procedure in Article 3 which enables a Member State to take action when it considers that it is being targeted by broadcasts from another Member State which undercut the rules which it sets for its own domestic TV broadcasters.

Under Article 3, the first Member State could ask the second, as the “Country of Origin”, to request the broadcaster to comply with the stricter rules. This request places no legal obligations on the broadcaster. If the broadcaster chose not to comply, however, and had established itself in the second Member State in order to avoid the stricter rules of the first, then the first Member State could then take its own domestic action against the broadcaster.

The procedure would be overseen by the European Commission, which would be required to decide whether what was done was compatible with Community law and could if necessary tell the First Member State to reverse any domestic measures it had taken.

We were seriously concerned about this as possibly creating an exception to the Country of Origin principle which is the key feature of this Directive. The version of this procedure in the Council’s text is acceptable, in particular because there is no compulsion on the Country of Origin to take measures itself, and because the language of the proposal reflects the existing European Court of Justice jurisprudence (the “TV-10 case”) which upholds the right of companies to freedom of establishment.

Nevertheless I should emphasise—and I made this point very strongly at the Council on 13 November—that the Council text on this is at the absolute limit of what the UK is prepared to agree to. As against that, several of the Member States who originally supported this procedure had wanted a considerably stronger version of it, and formally opposed the final text in the Council.

The text contains a clause about television advertising in children’s programmes with which we remain concerned. This is at Article 11.2, which requires that a children’s programme must last for longer than 30 minutes before it contains an advertising break. We see no reason for this. I lodged an objection to it in the Council, and we will return to this issue as discussion of the proposals continues.

25 November 2006

Letter from the Chairman to Shaun Woodward MP

Thank you for your letter of 25 November 2006 which Sub-Committee B considered at its meeting on 4 December.

We are grateful to you for confirming that the public sector broadcasters in the UK exceed the requirements of Articles 4 and 5, and for the summary report from Ofcom which you sent us.

We are however seriously concerned that the Government has limited its actions on what are unsuitable criteria contained in these Articles to “a watching brief”, as there is a clear danger that future reports will mislead readers as to the state of broadcasting in the UK. We trust that you will consider raising this issue with the Commission.

As you are aware, we are finalising our report into the revision of the Television without Frontiers Directive and expect to publish shortly.

6 December 2006

Letter from Shaun Woodward MP to the Chairman

Thank you for your letter of 6 December.

You expressed concern that the Government had confined itself to keeping a watching brief on the criteria contained in Article 4 and 5. If I may elaborate, the Commission did not propose any changes to these articles and so, technically, they are not open for discussion in the current negotiations on the Directive. However, what is clear from the discussions about European productions in on-linear services is that there are very different views across Europe and my judgment is that seeking to open discussion of the linear quotas would be risky at this stage.
I do take your point that the Commission’s report fails to recognise the very good story the UK has to tell on overall levels of investment in European production and we will seek an appropriate opportunity to raise this with the Commission.

8 January 2007

Letter from the Chairman to Shaun Woodward MP

Thank you for your letter of 8 January 2007, which Sub-Committee B considered at its meeting on 22 January.

We understand your reluctance to open negotiations on the criteria for European-produced content contained in Article 4 and 5 of the Directive, bearing in mind the difficulties recently encountered in discussions on non-linear services. However, we remain concerned that the report does not reflect the healthy state of European-produced content in UK public service broadcasting, and are reassured by your commitment to “seek an opportunity to raise this with the Commission”. We look forward to hearing of their response.

You may be interested to know that we are planning to publish our report into the revision of the TVWF Directive in the first week of February.30 We will of course send a copy to you and look forward to hearing your response in due course.

29 January 2007

Letter from Shaun Woodward MP to the Chairman

I thought that I should write briefly to express my appreciation for the work which Lord Freeman and his Inquiry Committee have done in analysing and reporting on the complicated issues which surround the Commission’s proposals for revising this Directive.

We will of course be submitting a formal Government response to their report but I think it right, if I may, to tell you now that we think it is an excellent piece of work which will stand as an important and positive contribution to discussion on this issue.

I was impressed in particular by the careful way in which the report distinguishes between the proposals as they were originally published by the Commission in December 2005 and the Council of Ministers’ General Approach and European Parliament First Reading texts. These texts were both of course being worked up at precisely the time when Lord Freeman’s Committee were engaged on their Inquiry, and I was glad to see the endorsement in the Inquiry’s report of the progress that they mark in relation to the crucial issue of the scope of the Directive. I was also struck by the report’s penetrating and judicious commentary on the other fundamental issue of the Country of Origin principle.

I should however mention that we were slightly surprised at the tone of the press release which marked the publication of the report, which—with the exception of course of Lord Freeman’s own quote—gave a rather more hostile assessment of the position than the actual contents of the report appear to justify. It seemed to me that the press release rather implied that the Commission were continuing to promote their original proposals, when it was clear from their own evidence that they were not. That is of course entirely a matter for you, but I would of course be glad to discuss the issues with your Committee again if that would help in any way.

I expect within the next few weeks to be laying an Explanatory Memorandum before your Committee about the revised proposals which the European Commission will, we believe, be publishing fairly soon now and we are also, as I have said, planning to respond formally to the Inquiry report as you have asked. Either of these submissions would provide a good opportunity for a further discussion with Lord Freeman’s Committee, and I stand ready to help in any way that I can.

18 February 2007

Letter from the Chairman to Shaun Woodward MP

Thank you for your letter of 18 February, which Sub-Committee B considered at its meeting on Monday 5 March.

We were grateful to you for providing us with your very positive initial reaction to our report. We apologise if the press release accompanying the report was not clear in separating out the evolving versions of the text, but felt that strong criticism of the scope of the Commission’s 2005 proposal was both warranted, and necessary to set the content for our inquiry. The press release did note that, with the exception of the Country

of Origin principle and aspects of the quantitative rules on advertising, the latest versions of the text were a marked improvement. This remains our view.

We would very much welcome the opportunity to meet with you following consideration of both the Explanatory Memorandum on the revised text, and the formal Government response. Such a meeting would also be very helpful to us in discussing some of the other important EU policies, such a spectrum allocation.

7 March 2007

THIRD RAIL PACKAGE (7147/04, 7148/04, 7149/04, 7150/04, 7170/04, 7172/04)

Letter from Tom Harris MP, Parliamentary Under Secretary of State, Department for Transport

to the Chairman

I am writing to update you on the progress of this package of measures, the draft Directive on the development of the Community’s railways, the draft Regulation on passenger rights, and the draft Directive on certification of train crews. There has been no significant movement on this package for some time, however the EP Transport Committee has now voted on the package on 19 December 2006 with the following results:

— opening up access to the international passenger market: 30 in favour and 15 against;

— passenger rights: 44 in favour and 1 against; and

— train crew licensing: 46 in favour and none against.

The package will now go to the EP Plenary on 17 January 2007, and is then almost certain to go to conciliation under the German Presidency, who have advised that their focus during their Presidency will be to work with the EP to complete the package. They had hoped for a deal at 2nd reading, but this has proved impossible. The UK fully supported the Common Position, and the text which will go to the January Plenary diverges from it in some ways. For the most part these relate to extension of scope from the original text. In the case of market opening, although the original intention was to open up only the international passenger market, the EP have voted for domestic application too, over a longer time-scale. This does not present a problem for the UK, provided that market opening is done in a transparent fashion. The passenger rights measure widens the original proposal in several way, including application to all, not just international, passengers, extension the definition of persons with reduced mobility, and more stringent requirements on accessibility of stations and services. The train crew licensing measure is widened to include non-driving crew who perform safety-related tasks; Member States will have some flexibility in identifying such crew.

A realistic assessment of what, if any, financial implications there might be will not be practicable until the final form of the package has been decided. It is, however, unlikely that there will be significant additional requirements arising in the short-term.

I will, of course, keep you informed of further progress with this proposal following the EP Plenary and the expected conciliation.

17 January 2007

Letter from the Chairman to Tom Harris MP

Thank you for your letter of 17 January 2007, providing an update on the Third Rail Package. Sub-Committee B considered your letter at its meeting on 19 February.

We note that it is not yet practicable for you to provide “a realistic assessment” of the likely financial implications of the package. We would be grateful to you for such an assessment as soon as the package is in a finalised form, and in the meantime would be grateful to you for an update on the conciliation process.

We will maintain scrutiny on the package at this stage.

26 February 2007

Letter from Tom Harris MP to the Chairman

Further to my letter of 17 January, I am writing to update you on the outcome of the European Parliament’s (EP) plenary debate and vote on 17 January.

The result of this debate showed some softening of the EP’s position, but this will almost certainly not be enough to avoid conciliation. The package was the only item on the agenda of the Council Working Group on 31 January and 1 February. The Presidency wanted to gauge Member State flexibility and potential
compromise to inform their subsequent discussion and negotiation with the Council and EP. The outcome of discussion showed:

— Market Liberalisation, Member States had some flexibility, but there were some concerns regarding the levy on railway undertakings providing an international service, and many were against a report by 2012 on state readiness for domestic opening (including some in favour of liberalisation who wanted a proposal before that).

— Train Crew Licensing, Member States had some flexibility; but wanted to resist extension to encompass other on-board safety related crew if possible.

— International Passenger Rights, Member States had minimal flexibility with the amendments relating to People with Reduced Mobility (PRM) requirements, and were vehemently opposed to the EP amendment to extend the scope to domestic services. Some Member States noted that while the EP wanted to extend passenger rights domestically, they were not prepared to give a date for liberalising the market, which was inconsistent. Others had rejected any connection between the two.

It is expected that the Council will reject the version of the package which came out of the EP plenary, and the conciliation would follow. We do not have a date for this yet.

The issues which remain for the UK are principally the following:

— On liberalisation, we remain committed to domestic market opening, and would prefer a date for domestic liberalisation. However, as all the EP voted for is a report in 2012 on Member State readiness for domestic opening, this is effectively no longer under discussion under the third rail package.

— On train driver licensing, we are not in favour of extending the provisions to non driving crew, but could accept the current version which allows Member States to define which individuals are covered; the other issue is restrictions on the ability of the competent authority to delegate some of its tasks.

— On international passenger rights, we remain opposed to extension to all services and to the imposition of additional burdens on railway undertakings and train operators, which we do not see as providing significant benefits; the current version would, however, set transitional period for implementation of all these provisions.

I will, of course, keep you informed of further developments.

19 February 2007

Letter from the Chairman to Tom Harris MP

Thank you for your letter of 19 February, which Sub-Committee B considered at its meeting on 5 March.

We were once again grateful to you for your report of the European Parliament’s Plenary vote, and of the Council Working Groups on the Third Rail Package. We note, and share your continued opposition to the amendments made by the European Parliament, and would support your rejection of these amendments in Council.

We will maintain scrutiny of the proposals at this stage, and would of course be grateful to you if you could inform us of any developments.

7 March 2007

TRANS-EUROPEAN TRANSPORT AND ENERGY NETWORKS (10089/06)

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

Thank you for your letter of 14 August 2006,31 replying to my letter of 19 July. Sub-Committee B considered your letter at its meeting on 9 October.

In my letter of 19 July, two questions were raised: we asked you to explain to us the rationale behind the Commission’s proposal that priority inland waterway projects should have higher levels of financial intervention than priority projects involving other modes of transport and we asked for details of the Commission’s explanation of how the proposed loan guarantee arrangements would operate.

We look forward to receiving a response to our two questions, and will continue to maintain the scrutiny reserve on this proposal at this stage.

10 October 2006

Letter from Rt Hon Margaret Hodge MP to the Chairman

I am writing to update you on developments relating to Explanatory Memorandum 10089/06.

On 8–9 June the Council adopted Conclusions on the NAIADES action programme to promote the use of inland waterways for freight transport. The Conclusions invited the Commission to give “appropriate weight” to inland waterways projects within the framework of the Trans-European Network, transport (TEN-T). They also indicated that the River Information Services (RIS) should be part of the Multi-Annual Indicate Programme of TEN-T. The Department for Transport wrote to the Committee on 5 July 2006 about this matter. I attach a copy of this letter (not printed).

The proposed TEN Finance Regulation number 10089/06 wished to pay special attention to inland waterways projects, increasing the intervention rate to up to 30%. We opposed this, and furthermore, we do not believe that the Conclusions justified this increase. While we agree that the TEN-T should concentrate funds on those projects of Community interest, we argue that the selection criteria should focus on how the project optimises the capacity usage of the TEN-T network, not on the mode of transport.

We were successful in removing the reference to a 30% intervention rate for inland waterways works-based projects in a subsequent Presidency compromise proposal number 12777/06. We have been unable to retain our blocking minority opposing further increases in the TENs intervention rates, and the removal of this reference was therefore a trade-off in exchange for the general increase in the intervention rates.

The Presidency issued a final compromise proposal, 12777/06 following the COREPER of 15 November 2006. Notably, the proposal sets the new TENs intervention rates for 2007–13 following observations made by the Member States and draft amendments by European Parliament representatives. An outline of the revised TEN-T intervention rates is enclosed (not printed).

Regarding the Commission’s explanation about how the proposed loan guarantee mechanism would work, the Annex to the final compromise proposal includes clarification on the proposed loan guarantee instrument which was the subject of an Explanatory Memorandum number 7281/05, 7282/05 and 7280/05, considered by Sub-Committee B on 20 June 2005. The Annex sets out, in general terms, the form that the support under the loan guarantee will take and provides that the Community Contribution to the loan guarantee instrument would be committed by 31 December 2013 at the latest, with the approval of guarantees to be finalised by 31 December 2014. The guarantees may not exceed five years after the date that projects are taken into operation. In exceptional circumstances the guarantee may be granted for up to seven years.

The proposal notes that the contribution from the Community budget to the loan guarantee instrument may not exceed €500 million. The European Investment Bank (EIB) would contribute an equal amount. The proposal also states that the Community input to the loan guarantee instrument would be limited to the amount of the Community contribution and that there would be no further liability on the Community budget.

In the case of termination of the loan guarantee instrument during the current Financial Perspectives, any balances on the Trust Account, other than funds committed and funds needed to cover other eligible costs and expenses, would be returned to the TEN-T budget line. If the loan guarantee instrument were not extended into the next Financial Perspectives, any remaining funds would be returned to the revenue side of the EU budget.

Funds allocated to the loan guarantee instrument may be called upon until either the last guarantee has expired or the last subordinated debt has been cleared.

UK officials have been involved in all aspects of the negotiation on the PPP loan guarantee and throughout these negotiations have been clear that the basis of any transfer of risk must be that it is placed with the party best able to manage it and it must not be the case that the guarantee undermines this principle. Key to ensuring that risk transfer remains a reality within TENs PPP projects has been the inclusion in this Regulation (Annex 6), at the prompting of the UK, of a facility to support availability payments to PPP contractors. This will enable TENs PPP projects to adopt a mechanism whereby payments to the contractor are (in part) dependent on the availability of the infrastructure to a contractually agreed standard.

The Regulation and Annex set out in general terms the principles of the loan guarantee but much of the operational detail will be covered in a co-operation agreement between the Commission and the EIB. As stated in Explanatory Memorandum number 7281/05, 7282/05 and 7280/05, this proposal is an incentive measure and as it will not impose any burdens on the private sector or any additional burdens on the public sector, this proposal did not require a Regulatory Impact Assessment.

In conclusion, the revised proposal presents the best possible outcome for the UK. We were able to remove the reference to a 30% intervention rate for inland waterways works-based projects, and although the intervention rates have increased, these are the maximum rates; in practice the Commission rarely hits the higher rates.

The next stage of the procedure relating to the proposed Regulation will be the formal adoption of the Council Common Position on the proposal, which is expected in February 2007. I would therefore be grateful if you could please confirm that the above information would enable your Committee to clear the document from scrutiny.

I am also enclosing a letter from the Department for Transport 5 July 2006 (not printed).

19 December 2006

Annex A

COMPROMISE PROPOSAL 12777/06

INTERVENTION RATES IN THE FIELD OF TRANSPORT FOR 2007–13 (TEN-T)

<table>
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<tr>
<th>TEN-T</th>
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<th>Compromise Proposal</th>
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</tr>
<tr>
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<td>15%</td>
<td>10%</td>
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</table>

Letter from the Chairman to Rt Hon Margaret Hodge MP

Thank you for your letter of 19 December, replying to my letter of 10 October, which Sub-Committee B considered at its meeting on 15 January 2007.

We were grateful to you for providing an update on the draft Regulation, and for addressing our questions on the levels of financial intervention and the loan guarantee arrangements. We welcome the abandonment of the 30% intervention rate for inland waterways in the latest Presidency compromise, as we shared your view that funds should be concentrated according to the value of the project rather than the mode of transport. We do however recognise that inland waterways represent a sustainable alternative, and should be supported as part of the wider efforts to tackle CO₂ emissions.

We understand that the UK is no longer in a position to prevent further increases, and that the consequent raising of the maximum rates for intervention across the board was “a trade-off”. We hope that, as you write, these are treated as maximum limits, and rarely approached by the Commission.

As the revised draft does represent an improvement on the original draft, we are content to lift scrutiny on the proposal ahead of the Council meeting in February. We would of course be grateful to you for a report on the meeting should a common position be agreed.

17 January 2007

34 N/A as no special attention was given to Inland Waterways. Intervention rate set as other work-based priority projects.
35 50% for projects implementing European Traffic Management Systems (ERTMS).
36 20% for projects implementing other traffic management systems.
INTERNAL MARKET (SUB-COMMITTEE B)

VEHICLES APPROVAL DIRECTIVE (11641/03, 14469/04)

Letter from Stephen Ladyman MP, Minister of State for Transport, Department for Transport to the Chairman


You stated that your Committee wished to maintain Scrutiny Reserve since there was uncertainty over the European Parliament’s views on the possibility of a Second Reading Deal. As explained in my letter of 10 March 2006, this proposal has reached the point where an agreement at Council is possible and I understand that a Second Reading Deal with the European Parliament is still thought to be a possibility as well. I am sorry that I cannot give you more accurate information on this, but I understand that MEPs are still considering the possibility of further amendment.

There have been no substantive changes to the proposal since my letter; the only changes have been editorial amendments to ensure the document is consistent throughout and accurate in translation. The proposal is now about to go to Council for agreement, and I would be grateful if the Committee could consider lifting the scrutiny reserve. I will, of course, keep you informed of the outcome of the European Parliament’s Second Reading when it takes place.

8 December 2006

Letter from the Chairman to Stephen Ladyman MP

Thank you for your letter of 8 December 2006, which Sub-Committee B considered at its meeting on 11 December.

We understand that at this stage it is not possible to be certain whether a Second Reading Deal will be reached in the European Parliament. We are however satisfied that the text which is going to the Transport Council for agreement represents a significant improvement on the original proposal and for that reason we are content to lift scrutiny.

We would be grateful to you for an update as soon as the position of the European Parliament is clear.

12 December 2006

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Foreign Affairs, Defence and Development Policy (Sub–Committee C)

8TH AND 9TH EUROPEAN DEVELOPMENT FUND: RESOURCES TO SOMALIA (6484/07)

Letter from the Chairman to Gareth Thomas MP, Parliamentary Under-Secretary of State, Department for International Development

Sub-Committee C considered the above proposal on 15 March and decided to hold it under scrutiny.

The Sub-Committee appreciates the desperate and urgent needs of Somalia, but would like further information before clearing the proposal from scrutiny, in particular an assessment of the political situation, and information about how the Commission intends to work with the Somali Government to disburse the proposed increase in funds. Will there be Commission presence on the ground to ensure the proper use of the funds? We would also welcome information about the effectiveness of previous allocations under the EDF in improving governance, education and access to safe water.

The Sub-Committee noted that there was no mention of Somaliland and would particularly like to know what funds are to be allocated to Somaliland and how would they be disbursed. What are the future plans for Somaliland?

The Sub-Committee would also welcome information about whether consideration is being given to the UN itself paying for operations by the African Union when they are authorised by a UN Security Council Resolution.

19 March 2007

Letter from Gareth Thomas MP to the Chairman

I refer to your letter dated 19 March confirming that the Committee is holding the above proposal under scrutiny pending further information.

You requested an assessment of the current political situation in Somalia. We continue to support the Transitional Federal Institutions (TFIs) as the best hope to bringing lasting peace and stability to Somalia, and welcome the intention to hold a National Reconciliation conference including all regions and clans. The recent upsurge in violence in Mogadishu, and the reports of a disproportionate use of force leading to civilian casualties is deeply disturbing. There will be no reconciliation without there first being an end to the violence.

You asked how the European Commission (EC) will work with the Somali Government, including whether it has a local presence, and sought information on the effectiveness of its current activities. The EC Delegation in Nairobi has overall responsibility for managing the programme and is supported by offices in several regions of Somalia, including in Somaliland. It is currently the only major donor with a presence in the country, with 14 staff based there. The EC provides some 48% of all aid to Somalia. The EC has agreed with the TFIs to use additional funds for continued support for reconciliation efforts and institutional capacity building. It is currently developing a joint strategy with other donors, including DFID, for how to use funds to be made available from the 10th EDF (2008–13).

An external evaluation of the EC’s programme, conducted in 2006, provided a generally positive assessment. Despite the considerable challenges posed by the conflict, the EC’s assistance was considered to be effective and flexibly managed. The choice of key focal areas were considered relevant, reflecting a good analysis of the political situation, and complementary to other donors’ programmes, including DFID’s support. EC assistance was considered to have contributed to the successful conclusion of peace negotiations that led to the establishment of the TFIs in 2004, and successful elections in Somaliland in 2005. EC programmes have also supported a 23% increase in primary education enrolment and helped 30,000 adults to receive radio-based literacy training. Through its rural and urban programmes, the EC is helping to bring safe water and sanitation to 250,000 and 500,000 people respectively.
You asked whether Somaliland receives any support from the EC and how it is disbursed. Some 50% of the 9th EDF funds available to Somalia are supporting programmes in Somaliland in the areas of economic growth and diversification, private sector development, good governance and peace building, rural development and food security, and health and education services. We expect Somaliland to similarly benefit from EC funding through the 10th EDF, though it will not receive a specific allocation.

Finally, you asked whether the UN is giving consideration to paying for AU missions which have been authorised by the Security Council. There is currently no provision for such funding by the UN. The lack of predictable, flexible financing for African peace missions remains a serious constraint on their ability to fulfil their mandates, as we have seen with the AU mission in Darfur. This is becoming widely recognised. On 28 March there was an open Security Council debate, chaired by South Africa, during which this issue was raised. A subsequent Security Council Presidential Statement requested the Secretary-General to provide recommendations on ways in which the UN could deepen its cooperation in this regard with regional organisations, especially the AU. We welcome this and are committed to working with partners at the UN and within the EU and G8 to find sustainable long-term funding solutions. EU Member States have recently agreed to provide €15 million from the Africa Peace Facility, funded through the 9th EDF, to support the AU mission in Somalia.

I hope this information will allow your Committee to lift scrutiny on this proposal and in particular before the ACP-EC Joint Council of Ministers on 24–25 May. The Presidency is aiming to put this on the agenda of the 15–16 May GAERC.

18 April 2007

10TH EUROPEAN DEVELOPMENT FUND: IMPLEMENTATION (14661/06)

Letter from the Chairman to Gareth Thomas MP, Parliamentary Under-Secretary of State, Department for International Development

Sub-Committee C considered the above document at its meeting on 7 December 2006 and agreed with the general thrust of the proposals, which should improve the management of the funds committed under the 10th European Development Fund over the period 2008–13.

The European Development Fund is one of the main instruments at the disposal of the EU to implement the Strategic Partnership with Africa, on which the Committee recently published a report (34th report of Session 2005–06, 7 July 2006). The report covered many of the issues that the proposed Council Regulation seeks to address, such as cooperation between the EU and the Member States in the programming of development assistance. Therefore, the report is the basis for the Committee’s general position on the European Development Fund.

Overall, the changes proposed in the draft Regulation are welcome. However, the Sub-Committee’s deliberations gave rise to some reservations on aspects of the current text, several of which echo those that you sent out in your Explanatory Memorandum dated 15 November 2006.

Article 10.4 on the EDF Management Committee

In your Explanatory Memorandum you rightly raise the issue of the decision-making process in the event of a disagreement between the EDF Committee (representing the Member States) and the Commission. We think, that Article 10.4 is ambiguous, and allows for automatic implementation of the measures by the Commission after the 30-day deadline, if the Council has not adopted a dissenting position by that time.

We assume you agree that the procedure should be streamlined in order to avoid the bypassing of the EDF Committee by the Commission, and to avoid clogging up the agenda of the Council. The Regulation could stipulate, for example, that the Commission must take into account the views expressed by the EDF Committee, and possibly that the Commission should present a new version of the proposed measures if the EDF Committee feels that this is necessary. Can you confirm that proposals would only be sent to Council for a final decision if the EDF Committee had rejected the revised proposals. Overall, the changes the Sub-Committee recommend should serve to strengthen the oversight role of the EDF Committee.
Article 10.6 on the management of the African Peace Facility (APF)

It is questionable whether the idea of an action programme is compatible with the flexible use of the APF funds to respond to unpredictable crises on the African continent. You have indicated that you intend to seek clarification on the scope and management of the proposed action programme, a move which we very much welcome and support. We hope that in doing so, you will ensure that the APF can be used in a flexible and non-bureaucratic manner, by amendment of the current text if necessary.

Article 7.4 on “technical” and other adjustments

We support the need for a clarification of this clause, as set out in your Explanatory Memorandum. A requirement should, however, be inserted for the Commission to automatically inform the EDF Committee of changes which are made under application of this article.

Article 3.1(b) on dialogue with the partner country/region

In the spirit of ownership of the development process by the countries/regions concerned, this paragraph could refer specifically to the need for leadership by partner countries/regions, as opposed to the current text which only refers to “sufficient ownership”. We believe that this would be very much in the spirit of the European Consensus on Development.

Article 3.1(c) on stakeholder involvement

This article would benefit from a widening of the scope of stakeholder involvement. In particular, this paragraph could refer to national and regional actors, including the national parliament and regional assemblies, as well as non-governmental and civil society organisations, where appropriate, whether representative or not. Other international organisations, such as the United Nations and the International Financial Institutions, may also warrant a mention. Article 4.6 could be amended along similar lines in a manner consistent with Article 3.1(c).

The Sub-Committee has agreed to clear the document from scrutiny, on the assumption that these comments will be taken into account in the current negotiations by HMG. I would also be grateful if you could keep the Committee informed of the outcome of the negotiations.

A final point relates to the Explanatory Memorandum, which was slightly unclear concerning the timetable for adoption. Explanatory Memoranda need to contain a clear indication of the timeline and process for the consideration of proposals, including when they are expected to go to Council for adoption or to be noted, where relevant. This will help the Sub-Committee plan its work and make sure that you receive comments in a timely fashion.

12 December 2006

Letter from Gareth Thomas MP to the Chairman

Thank you for your letter of 12 December 2006 in response to my Explanatory Memorandum dated 15 November 2006. You informed me that the Sub-Committee agreed with the thrust of the proposals but had a number of comments which you wanted to be taken into account in the negotiation of the document. I am writing to update you on the negotiations, including on the specific issues you raised.

When I wrote in November the timetable for adoption was unclear. Finland was aiming to secure agreement during its Presidency. Reasonable progress was made before Christmas, but some issues remain unresolved. The German Presidency is aiming for adoption during the first quarter of this year. This seems realistic. The Commission issued a revised proposal on 7 December which will be discussed later this month. There are likely to be further alterations to this text before the negotiations are concluded.

As regards the Sub-Committee's comments:

Article 10.4 on the EDF Management Committee

The Commission has agreed that the Article should be amended so that the EDF Committee is not bypassed. The revised version states that the Commission “shall defer” application of the measures in case of a disagreement with the EDF Commission, rather than “may defer”. I agree that the Council should only be consulted as a last resort. This procedure is only likely to be used very rarely, if at all.
Article 10.6 on the management of the African Peace Facility (APF)

Our priority remains the ability to use the APF in a speedy, flexible and non-bureaucratic manner. The proposed action programme should help provide more strategic direction for the use of the funds, but I do not think that it will restrict the Commission and Council’s ability to manage the funds flexibly and efficiently given the other provisions within the draft Regulation.

Article 7.4

In response to UK concerns, the Commission has added a sentence to the revised version station that they will inform Member States within one month of technical adjustments which are made under this article.

Article 3.1 (b) on dialogue with the partner country/region

The Commission is understandably keen to keep the document reasonably concise. So it may not be possible to include an exhaustive list of stakeholders. Nevertheless I agree with the sentiment of your comments and I can assure you that during the Council discussions the UK has stressed the importance of adequate stakeholder involvement when programming EDF funding. This is reflected in Article 1 of the revised draft. The Sub-Committee may also like to note that the Commission has agreed to make changes to the text of Articles 6.3 and 6.4 in response to the queries set out in my Explanatory Memorandum.

As requested in your letter I will keep the Committee informed of the outcome of the negotiations.

31 January 2007

AECH MONITORING MISSION

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

Ian McCartney wrote to you on 4 September 2006\(^1\) to inform you of plans to extend the Aceh Monitoring Mission (AMM) until 15 December. The European Union Scrutiny committee requested that I write again, after the Mission’s completion, with my assessment of the outcome of the political process and the Mission’s contribution to it.

PEACE PROCESS

The Helsinki Peace Agreement, signed in August 2005, brought an end to over thirty years of armed conflict. Implementing the agreement has required significant political commitment on both sides to deliver on often challenging commitments.

The credibility of the local elections (described by the EU election observers as ‘competitive, transparent and well-administered’) is the most obvious sign of the progress which has been made. This reflects the fact that throughout the last 18 months, all the parties to the peace agreement have shown considerable will to overcome practical and political difficulties and move the peace process forward.

The first step in implementing the peace process was withdrawal of non-indigenous government forces, with parallel decommissioning of Free Aceh Movement’s (GAM) weapons. This was completed by the agreed deadline of 31 December 2005. Another key government achievement was the passage of the Law on the Government of Aceh, taking forward the undertaking in the peace agreement to give Aceh authority over most of its public affairs. The government has fulfilled its undertaking to provide amnesty to GAM prisoners, and provide reintegration funding to GAM former combatants. It has undertaken to pass a law in 2007 to allow regional political parties (currently only parties with a national support based are allowed to contest elections). GAM has said it will complete its transformation into a political party within 6 months of this law being passed. Throughout the process, disputes which arose were resolved through dialogue, facilitated by the AMM.

\(^{1}\) Correspondence with Ministers, 40th Report of Session 2006–07, HL Paper 187, p 151.
CONTRIBUTION OF AMM

As anticipated, the AMM formally ended its mandate on 15 December. The AMM played an important role supporting the peace process. It facilitated regular meetings from regional to sub-district level between the security forces and GAM representatives, which contributed toward building trust between the two sides and in some cases helped to resolve contentious issues. In the handful of more serious incidents where the AMM had to conduct an investigation, both sides were prepared to accept, in large part, the AMM findings. Initial suspicions in the Indonesian parliament and press about the role of the AMM were largely allayed and the AMM was praised for its transparency by Indonesian stakeholders and outside analysts.

This was the first European Security and Defence Policy (ESDP) mission to monitor a peace agreement, the first in Asia and the first with the participation of countries from another organisation, the Association of South East Asian Nations (ASEAN). It is potentially a model for future ESDP engagement in the region.

During our Presidency of the EU, the UK played an important role in securing an early and positive EU response to the Government of Indonesia’s invitation to establish the AMM and taking forward discussions on the status of the Mission at extremely short notice. UK support was also vital to the rapid and credible deployment of the AMM so that it could have an interim presence on the ground as soon as the peace agreement was signed. This presence was an important factor in maintaining confidence on the ground and ensuring that implementation of the peace agreement started well. UK officials seconded from the FCO and British Embassy Jakarta played a crucial role in supporting the Head of Mission’s office and the Mission press and communications team.

RISKS

The new governor, Irwandi Yusuf, will need to build good relations with the central government and win the confidence of those who still do not fully trust the process. He will also need to respond credibly to Aceh’s other needs, including long-term reintegration and reconstruction. Although he has little practical political experience, he played an important role in the peace negotiations, and since the peace agreement has been GAM representative on the joint committee (government, GAM and AMM) taking forward implementation of the peace process. This has given him experience of negotiating with Jakarta. The AMM found him pragmatic and constructive.

It will be important for the parties to maintain direct dialogue now that the AMM is no longer facilitating contact, not least on the implementation of the Law on Aceh Administration (outstanding areas of dispute include the division of powers between central and local government and the share of oil and gas revenues reverting to Aceh). Although the peace process has been very successful so far, the legacy of mistrust between Acehnese and central government, built up over decades of conflict, will take time to resolve.

We, and other key international players including the EU, will stay engaged on Aceh through our Embassy in Jakarta, to monitor continued progress in implementation of the peace agreement, and post-conflict reconstruction and peacebuilding.

8 January 2007

DEFENCE PROCUREMENT

Letter from Lord Drayson, Minister for Defence Procurement, Ministry of Defence to the Chairman

I enclose an Explanatory Memorandum (not printed) covering the European Commission’s Interpretative Communication (IC) on the application of Article 296 of the treaty in field of defence procurement.

We assess that the Commission’s Interpretative Communication does not have any direct policy implications for the United Kingdom as we believe that the United Kingdom already complies with the Commission’s interpretation of the correct use of Article 296 TEC.

As a result of this assessment we do not foresee the IC having any impact on our implementation of the Defence Industrial Strategy (DIS), given that the objective of the DIS is consonant with the purpose of Art.296. Neither do we anticipate the IC hindering our ability to procure defence equipment from the United States or elsewhere in the world in order to meet our defence capability requirements. However we do hope that it will result in a more open European defence equipment market and better cost efficiency.

30 January 2007
DEVELOPMENT POLICY AND THE IMPLEMENTATION OF EXTERNAL ASSISTANCE 2005

Letter from Gareth Thomas MP, Parliamentary Under-Secretary of State, Department for International Development to the Chairman


The Committee raised concerns about the management of financial risks, both for the Commission’s budget support and for the whole of Community expenditure on development assistance. You asked me to comment on the Commission’s ability to evaluate the quality of public finance management before and during a budget support operation. As you will know, the Commission’s budget support has its own set of regulations designed to minimize risk of fraud and mismanagement. Safeguards are further strengthened by the European Court of Auditors, which audits the use of Community external aid (and audited the Commission’s budget support to Africa, Caribbean and Pacific countries in 2005). The Commission itself also performs ex-ante “audits” to check the robustness of recipients of Community budget support.

In addition, the Commission is now adopting the Public Expenditure and Financial Accountability (PEFA) framework to assess the quality of public finance management systems in partner countries. The Commission is actively involved in the development and implementation of the PEFA framework in partner countries, taking a lead role with the World Bank. I very much support this initiative; the UK will also be integrating PEFA in our own approach to fiduciary risk management.

You also asked for comments on the Commission’s capacity to identify, minimise and manage the risk of poor or fraudulent management of the disbursements of aid. I am satisfied in this regard. Much progress has been made since the reform programme began in 2000 to increase the effectiveness and reduce the risks associated with aid.

In 2001, EuropeAid was created in order to ensure sound and accountable financial, technical and contractual management of Community aid. At the same time, the Commission has “deconcentrated” (decentralised) much of its programme management to their country offices. This has helped to bring management much closer to the projects, with the commensurate increase in project quality and outcomes. The 2004 Court of Auditors’ Report on deconcentration concluded that robust financial management procedures are generally ensured under devolved management.

In order to improve the design of individual operations, quality support groups now review projects and programmes in preparatory stages and at completion of preparatory activities. These quality support groups use checklists based on evaluation criteria recommended by the Development Assistance Committee of the Organisation for Economic Co-operation and Development. These indicators include institutional capacity issues, monitoring and evaluation systems and risk management. The Commission’s Annual Report describes further measures taken in 2005 to help delegations carry out quality checks at the design phase of projects and programmes.

As much as any other development agency, the Commission is seeking to strike a balance between ensuring that risks are controlled, and working to provide aid at the right time and in the most useful ways. We will continue to work with the Commission to ensure that emerging lessons in this regard are fully understood and acted upon.

For your information, I attach the Council Conclusions that were adopted at the October GAERC. While these Conclusions welcome the Report, they emphasise the need for continuing improvements in many of the areas which I have highlighted to you in the past (including in my Explanatory Memorandum on the Report).

The Conclusions encourage the Commission to adopt a forward look when drafting the Report, rather than only commenting on issues in the calendar year under consideration. The Commission is encouraged to set out annual objectives explicitly, and to provide an assessment on achievement of these objectives. In particular they invite the Commission to make a clear link from the description of activities to the achievement of the Millennium Development Goals. The Council also invites the Commission to provide a more explicit description of the implementation and effects of the Paris Declaration on Aid Effectiveness.

25 November 2006
DUAL-USE ITEMS AND TECHNOLOGY (16989/06)

Letter from the Chairman to Malcolm Wicks MP, Minister of State for Science and Innovation, Department for Trade and Industry

Sub-Committee C considered the above document at its meeting on 8th March 2007 and decided to hold it under scrutiny.

The Sub-Committee strongly supports this Proposal for a Council Regulation setting up a Community regime for the control of exports of dual-use items and technology, and welcomes the stance taken by the UK Government. Overall the document provides for a streamlining of the current Regulation, but there are two major legal points which require clarification, relating to criminal sanctions and to information-sharing on criminal convictions. The Sub-Committee would also be grateful for clarification on three points of substance.

The proposed Regulation raises concerns regarding the competence of the European Community to require Member States to impose criminal sanctions. The Committee’s report “The Criminal Competence of the European Community” (no. 42, session 05-06) examined this matter in detail, with reference in particular to the judgment (September 2005) of the European Court of Justice (ECJ) in Case C-76/03 (Environmental Protection).

As you are aware, the Commission has adopted a wide interpretation of this judgment and asserts that it has such competence, but the Member States, including the UK, disagree, and the opposing parties are currently in an impasse over the issue. The issue remains live before the ECJ in the Ship Pollution case (Case C-440/05) but the Court is not expected to deliver its judgment in that case before the end of 2007. In the light of this ongoing dispute, does the Government support new Article 21 which requires the Member States to impose criminal penalties?

The second legal point concerns Article 15, which provides for exchange among Member States of information on convictions for criminal export-related offences. There are currently two initiatives underway in the Third Pillar which aim to build on the current EU system for storing and exchanging criminal record information among Member States (proposed Framework Decision on the organisation and content of the exchange of information extracted from the criminal record (Doc 5463/06) and Commission Working Document on the feasibility of an Index of third country nationals convicted in the EU (Doc 11453/06)). How does the obligation in the proposed Regulation fit into this general scheme? Does the Government have any concerns regarding the use of Article 133 to make provisions of this nature?

On substance, one point of concern to the Sub-Committee relates to Article 19, which provides for the setting up of a Dual-Use Committee. The wording is not very clear on the Committee’s composition (which can only be inferred from Art. 20), function or powers. Is the Government satisfied with the way this Article is drafted?

A second point of substance relates to the definition of dual-use items (Article 2). The wording used covers items which can be used to make nuclear weapons, but there is no explicit mention of chemical and biological weapons, nor of means of delivery. This apparently amounts to a discrepancy in relation to UN Security Council Resolution 1540, which refers to “nuclear, chemical, or biological weapons and their means of delivery” (para. 1), whilst Article 4(1) line 5, of the proposed Regulation also uses the wider definition. Does the Government consider that Article 2 covers the full range of dual-use items as set out in the substantive sections of the proposed Regulation? Or is there a case for the definition being widened to make it consistent with the rest of the proposed Regulation and bring it in line with UNSCR 1540?

A third point of substance relates to the effectiveness of the current regime. What is the Government’s assessment of the effectiveness of the Regulation currently in force; including in relation to the full implementation of its provisions by other Member States? In what ways will the amended regime for the control of the export of dual-use items be more effective than the current one?

The Sub-Committee would be grateful for clarification of the above points, and requests that the Government keep it informed on the negotiations in the Council on this dossier.

29 March 2007

Letter from Malcolm Wicks MP to the Chairman

Thank you for your letter of 29 March. We are consulting other Government Departments with a view to providing a full response to the points you raised. I will write again with a substantive response once further enquiries are complete.

16 April 2007
ESDP: AFGHANISTAN MISSION

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

The Presidency has told us that the Joint Action to establish a European Security and Defence Policy mission in Afghanistan is to be considered at the 23 April General Affairs and External Relations Council. However I am currently unable to deposit an Explanatory Memorandum on this matter, as I have not yet received a draft of the Joint Action. As you will know from previous correspondence this is an extremely important mission and one I am keen to see deploy soon. I will ensure an Explanatory Memorandum is sent to you as soon as I receive a draft of the Joint Action, which I anticipate will be during the parliamentary recess. But as there will be very limited time for you to consider this after the recess, I am writing to you now to give you as much information as possible. I trust this will allow you to consider the Explanatory Memorandum at your meeting on 18 April.

SUBJECT MATTER

The Joint Action will establish a civilian European Security and Defence Policy mission in Afghanistan in the field of policing with linkages to the wider rule of law. The mission will support the Afghanistan government extending its authority and the rule of law throughout the country.

The mission will form part of the overall international strategy for support to Afghanistan police reform. Specific mission activity will include support to the Ministry of Interior, and assistance to the Afghanistan National Police to help develop national strategies for criminal investigation and civilian police training. In order to do this the mission will deploy approximately 160 secondees, mostly civilian police. The mission will not have executive functions and will confine its activities to mentoring, training and advising. Given the scale of the task, the mission is likely to be agreed for at least 3 years, but subject to 6 monthly reviews and annual agreement of the mission’s budget.

The mission will build on the work of the German Police Project Office and bring greater coherence to the police reform efforts of major donors (UK, Canada and Norway) and bring new resources of Member States such as Spain, Finland and Denmark.

The European Security and Defence Policy mission is being co-ordinated with the Commission’s activities on justice in Afghanistan to ensure a coherent EU approach. The EU Special Representative will also provide advice to the head of mission.

SCRUTINY HISTORY

As you will recall, I have written to the Committees previously, on the possibility of a mission in Afghanistan, on 21 July and 6 December 2006, and 7 February and 7 March 2007.

POLICY IMPLICATIONS

I welcome the prospect of a European and Security Defence Policy Mission in Afghanistan. It is clear that there is a considerable need for support to the rule of law in Afghanistan and that the EU is well placed to bring coherence to police reform efforts. The EU mission and the US (the two major donors in this field) will determine strategy on police reform with the Government of Afghanistan.

The mission will also provide important support to current UK efforts on counter-narcotics. Counter-narcotics cannot be approached in isolation and I very much welcome the plan to bring counter-narcotics issues more fully into the wider rule of law agenda as part of the EU mission’s approach.

The security environment in Afghanistan represents a particular challenge. A fact finding mission has been undertaken and the planning team are consulting Member States with Provisional Reconstruction Teams and NATO staff to inform a robust approach to security, including minimum security operating standards, mandatory security training and evacuation plans.
FINANCIAL IMPLICATIONS

Funding for Common Costs (headquarters, equipment etc) is met from the Common Foreign Security Policy budget. The Council Secretariat is still working on the budget, but early estimates indicate that this will cost at least €40 million. The UK currently contributes 17% towards the Common Foreign Security Policy budget, which suggests the cost to the UK would be at least £4.5 million.

We will confirm our personnel contribution (and funding for this) once personnel requirements are finalised. As a strong supporter of the mission, the UK will want to make a significant contribution.

15 March 2007

Letter from the Chairman to Rt Hon Geoff Hoon MP

Thank you for your letter of 15 March 2007 providing the Sub-Committee with advance notice of the planned European Security and Defence Policy (ESDP) mission to Afghanistan. As you are aware, the Committee takes a close interest in Afghanistan, in particular any plans to deal with the narcotics problem.

Members of the Committee value highly advance notice of this kind of forthcoming business on scrutiny items. In this context we would like to thank you also for your very helpful letter of 20 March 2007 on “EU documents to be discussed at the General Affairs and External Relations Council of 23 April 2007”. We look forward to continuing to receive advance notice of such scrutiny items in future.

23 April 2007

ESDP: FACT FINDING MISSIONS TO THE DEMOCRATIC REPUBLIC OF CONGO (DRC) AND LEBANON

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

Further to my letter of 18 September 2006 regarding the prospect of an ESDP Security Sector Reform (SSR) mission in the DRC, the Council Secretariat and Commission have now decided to send a joint Fact-Finding Mission (FFM) to the DRC. This is taking place between 8 and 14 October. The aim of the FFM is to establish an objective view of what work could and should be done, and how this could be divided up between the Commission and the Council. A joint report will then be issued, recommending a way ahead for EU activity in SSR in the DRC.

Separately, the Political and Security Committee of the Council has asked the Council Secretariat to undertake a technical mission to evaluate what support the Lebanese Government and Armed Forces need in the security sector. Arrangements are in hand on this. No date has yet been set for the visit, but in view of the urgent need to ensure that UN Security Council Resolution 1701 can be fully implemented, it is expected that the mission will proceed around mid-October.

I will, of course, keep you informed of any concrete proposals to launch an ESDP mission to either Lebanon or the DRC.

16 October 2006

ESDP: MOD PARLIAMENTARY SCRUTINY GUIDELINES

Letter from the Chairman to Rt Hon Des Browne MP, Secretary of State for Defence, Ministry of Defence

Thank you for your letter dated 28 September 2006 and the enclosed new scrutiny guidelines which Sub-Committee C considered at its meeting on 12 October.

We welcome the new guidelines which, broadly speaking, are clear and concise and place the right emphasis on the need for MoD officials to carefully take into account the need for, and importance of, parliamentary scrutiny of EU developments and legislation in the area of defence. There are, however, a few points within the guidelines which we consider require further clarification.

In paragraph 19 of the guidelines it is stated that ‘In the event of an override, [a letter to the Chairman] should explain why (for reasons of policy and/or time pressure) an override was necessary’. As is noted in the guidelines, overrides are only applicable to legislative documents and should therefore be extremely rare in the context of the MoD. We do however recognise that overrides due to time pressures are occasionally understandable, particularly during parliamentary recesses (though even these can almost always be avoided in the House of Lords if sufficient advance warning is provided to the Committee).

However, it is not clear why there might be an override “for reasons of policy”. Under the Scrutiny Reserve Resolution you may choose to lift the scrutiny reserve following a disagreement over the policy contained within a document held under scrutiny by either the Lords or the Commons scrutiny Committees: this is termed an override for ‘special reasons’. Such reasons would, as you stress in the guidelines, have to be fully and immediately explained to the Committees by letter. We agree that this could constitute an override “for reasons of policy”. However, we consider this to be wider than the term “special reasons” and ask that the guidelines be clarified.

Paragraph 19 of the guidelines also states that covering letters to the Chairmen of the Committees should be attached to every explanatory memorandum “explaining what the EM is about and how its fits with UK policy”. Whilst we appreciate that sending a covering letter demonstrates a welcome approach towards transparency and openness, such letters are not strictly necessary, except in the case of an override. The explanatory memorandum itself should fully state what the attached document seeks to achieve and what the UK policy on the proposal is.

In paragraph 18 of the guidelines it is stated that ‘There is a fine balance between discharging our responsibilities on scrutiny and wasting the Committees’ time. Trivial amendments or updates will often not require scrutiny’. With respect to legislative documents Ministers may, under the Scrutiny Reserve Resolution, give agreement in Council to a proposal which is ‘trivial or is substantially the same as a proposal on which scrutiny has been completed’. The guidelines are therefore substantively correct, but we would like to stress that it is for us to decide whether our time is being wasted. We have not yet encountered any such problem with documents deposited by the MoD and ask that officials recognise that we are interested to learn of any new developments, even minor ones. In appropriate cases it may be sensible to alert the Committees to new developments and updates by letter rather than with a full explanatory memorandum. In cases of doubt our clerks are always available to advise on such matters.

Paragraph 18 also states that ‘Some non-legislative documents may be deposited with the Committees for information purposes, after Council agreement’. Firstly, it should be made clearer that this provision only applies to those documents which do not fall within the scrutiny reserve resolution and that the ‘may’ in this sentence refers to deposit following a Council and not to the need to deposit a document per se. Secondly, it should be stressed that deposit following Council agreement should only take place where it is not possible to deposit a document prior to a Council due to its unavailability. All documents, whether legislative or not, should be deposited at the earliest opportunity allowing sufficient time for scrutiny prior to their consideration in Council. Written Ministerial Statements, and/or letters as appropriate, following Councils should be used to alert the Committees to any developments which took place during a Council.

I thank you and your officials once again for the time you have taken to prepare these helpful guidelines. Our officials are always happy to assist as you move towards the implementation of the guidelines and would, should you so wish, be more than willing to arrange a scrutiny seminar to talk through the new arrangements with your department.

25 October 2006

Letter from Rt Hon Des Browne MP to the Chairman

You will recall your letter of 25 October 2006 commenting on the MoD ESDP Parliamentary Scrutiny Guidelines I sent on 25 September 2006. I also received comments on these guidelines from Michael Connarty in his letter of 25 October 2006. You will recall that in my letter dated 1 November¹ I agreed MoD would revise these guidelines in light of the Committee’s comments, and provide you with a copy of the new edition.

I was pleased to inform you that these guidelines have now been revised. A copy of the new MoD ESDP Parliamentary Scrutiny Guidelines for Desk Officers is enclosed (not printed). I hope that these guidelines will further demonstrate our commitment to improving the transparency of CFSP related business.

In addition, I have asked my officials to consider your offer of assistance in the form of a scrutiny seminar involving your officials and the MoD. They will follow this up with the Committee Clerk in due course.

16 March 2007

¹ Refer to European Defence Agency–Steering Board Meeting, November 2006.
ESDP: SECURITY SECTOR REFORM MISSION IN THE DEMOCRATIC REPUBLIC OF THE CONGO (EUSEC RD CONGO)

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

Sub-Committee C considered the above document at its meeting on 23 March 2007 and decided to clear it from scrutiny.

We strongly support the main aim of the draft Joint Action, which is to enlarge the sources of finance for the mission, allow funding of specific projects, and improve co-ordination with the activities of the Member States. We hope that this will strengthen the capacity of the EU to support reform and stabilisation efforts in the Democratic Republic of the Congo (DRC).

The creation of a mechanism for this EU mission to receive funding from Member States and provide a framework for their projects to be implemented is certainly desirable, but we were somewhat concerned that what appears to be a new arrangement for the financing of civilian ESDP missions had not been more clearly pointed out in the Government’s Explanatory Memorandum. We would therefore welcome a Government re-assurance that it is committed to providing the Committee with Explanatory Memorandums which fully analyse the policy implications of EU documents, with a clear reference to any arrangements or policies that are new or represent a departure from established practice.

We have decided not to hold the proposal under scrutiny on this occasion, but will continue to monitor the situation with regards to the quality and comprehensiveness of information provided by the Government in its Explanatory Memorandums.

28 March 2007

Letter from Rt Hon Geoff Hoon MP to the Chairman

Thank you for your letter of 28 March in response to my Explanatory Memorandum, dated 12 March, covering the expansion of the mandate of EUSEC RD Congo, the European Security and Defence Policy (ESDP) mission working on army reform in the Democratic Republic of Congo.

You are asked for clarification as to whether the mechanism for funding civilian ESDP missions has been altered. The answer is no. Missions will continue to be funded from the Common Foreign and Security Policy budget, with Member States covering the costs of any personnel that they second. I believe the confusion has been caused by paragraph 6 of the Explanatory Memorandum. This covers the amendment to EUSEC RD Congo’s mandate which allows the Head of Mission to use funding from individual Member States to pay for specific projects. This clause is entirely separate from the funding of the mission as a whole, and merely enables EUSEC RD Congo to co-ordinate bilateral donations and projects set up at the initiative of individual Member States which complement the remit of the mission. The ESDP police advisory mission in the Occupied Palestinian Territories (EUPOL COPPS) carries out a similar role as part of its mandate. The donor situation in the Democratic Republic of Congo is currently confused so, in the Government’s view, this is a sensible way to increase impact and avoid duplication of effort. It would not, however, change the funding base for ESDP missions or restrict Member States’ ability to act outside the ESDP mission.

I apologise if the wording of the Explanatory Memorandum was insufficiently clear. I can assure the Committee that the Government remains committed to ensuring that Explanatory Memoranda are as clear as possible in setting out the policy implications of EU documents.

12 April 2007

EU-CHINA: CLOSER PARTNERS, GROWING RESPONSIBILITIES (14381/06)

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

The above Communication was considered by the Sub-Committee C at its meeting on 23 November, and the attached working document on trade and investment was considered by Sub-Committee A on 28 November. Both Sub-Committees cleared the documents from scrutiny.

Sub-Committee C commended the Commission for a timely and thoughtful paper. However the Sub-Committee commented that the Commission seemed to have shown timidity in criticising the Chinese Government. In particular the Sub-Committee believed that the EU should not lift the arms embargo without concrete and sustainable concessions on human rights and the rule of law, pointing out that the
communication failed to address the question of arms transfers that are allegedly taking place through illegal or para-legal channels: the arms embargo will only prove to be a powerful negotiating chip if it is indeed effective and enforced.

Sub-Committee C also commented that the Communication painted a rather rosy picture of a common interest. However, recent analyses suggest that China’s role in the world is much less about promoting peace, development and human rights than about securing raw materials, especially oil, for its growing economy. In particular China has shown an ambivalent approach to the international peace and development agenda in Africa.

In general the Sub-Committee felt that the EU’s strategy toward China should seek to tackle the negative aspects of China’s world wide impact and influence in a more direct manner.

Sub-Committee C have also requested information on the financial implications in greater detail than the general statement in paragraph 14 of the Explanatory Memorandum.

28 November 2006

Letter from Rt Hon Geoff Hoon MP to the Chairman

Thank you for your letter of 28 November, about the Commission Communication China-EU: Closer partners, growing responsibilities.

You note that Sub-Committee C comments that the Commission seemed to have shown “timidity” in criticising the Chinese Government, with particular reference to the arms embargo and to China’s role in Africa.

The potential benefits of Chinese economic growth, for East Asia, and further afield, are real. Increased trade and investment is essential to Africa’s progress towards sustainable development and achieving the Millennium Development Goals. China, as a global economic power with a significant and growing economic relationship with Africa, will play a key role and there is already evidence that this relationship is contributing to African growth rates. China also provides large amounts of infrastructure investment across the continent.

We understand that China’s approach and priorities in Africa do not always overlap with the EU’s, and that in particular the EU needs to work to persuade China to act in ways that directly support peace and sustainable development, including through good governance and sound economic management. This will take time and require action on various levels. The Communication outlines some key areas including encouraging China’s participation in international fora to improve aid efficiency and co-ordination. Increasing EU-China practical co-operation on the ground is also part of this wider process.

The Communication also calls for structured EU-China dialogue on Africa’s sustainable development. Groundwork for such a dialogue is being prepared at working level within the EU. We look forward to an early start as part of our broader efforts to increase the depth and scope of our dialogue with China both through the EU and bilaterally.

With reference to the arms embargo, although the Communication notes the Commission’s belief that “the EU should work with China to improve the atmosphere for lift, making progress on China’s human rights situation”, it is important to note that this is a matter for Member States to decide. And there is currently no consensus for an arms embargo lift within the EU, as discussed at the General Affairs and External Relations Council on 11 December made clear. The agreed policy of Member States remains as set out in the European Council Conclusions of December 2004 which in this context “recalled the importance of the criteria of the Code of Conduct on Arms Exports, in particular criteria regarding human rights, stability and security in the region and the national security of friendly and allied countries”.

Member States decide at a national level how to interpret the embargo. The UK interprets the embargo in line with the statement made by FCO Ministers to Parliament on 3 June 1998, which covered lethal weapons including machine guns, large calibre weapons, bombs, torpedoes, rockets and missiles; specially designed components of the above and ammunition; military aircraft and helicopters, vessels of war, armoured fighting vehicles and other such weapons platforms; and any equipment which might be used for internal repression.

Allegedly “para-legal” shipments is also an issue for Member States to interpret at national level, within the framework of the EU Consolidated Code of Conduct. The Government believes that any item which falls outside those stipulated in the embargo is still subject to a rigorous application process and considered on a case by case basis. Should there be any concerns that the goods in question are likely to be diverted to an undesirable end-use, we will not issue a licence. We are not aware of any illegal shipments by UK industry.
The Committee also requested further information on the financial implications of the Commission Communication. At this stage, the Commission has not set out associated costs. However, we would expect that much of the cost of implementing the strategy contained in the Communication will be administrative; for example, those costs related to carrying out the EU-China Strategic and Human Rights Dialogues. Such costs will be met from within existing Commission and Member State budgets.

While the Communication does not explicitly address financial implications, we would expect EC funds for China to come primarily from the Development Cooperation Instrument under the External Actions Heading of the next EC Financial Perspective (2007–13). China would also be eligible to draw on funds from other thematic external instruments including the Stability, Environment and Nuclear Assistance instruments as necessary.

Some of the potential future actions outlined in the Communication will inevitably have associated costs. While it is not possible to quantify many of these costs, some broad estimates are possible—for example, working together to develop and deploy a near zero emission coal (NZEC) demonstration plant using carbon capture and storage (CCS) technology. To construct an NZEC power plant would cost roughly €190 million more than a traditional power plant of equivalent output. The EU has a climate security interest in demonstrating this technology within the Chinese market, and might contribute towards these additional costs.

The EU seeks, through its strategic partnership with China, to build up an increasingly mature and realistic dialogue across a range of international issues. The EU’s strategy recognises that, while we should seek to pursue engagement with China in areas of common interest, there are some aspects of China’s international influence that do not fully reinforce the EU’s objectives and values. As the Communication notes, “there remain differences in values, on which dialogue must continue”. The EU therefore seeks an effective working partnership, communicating its expectations in an open and clear manner, while avoiding potentially counter-productive language.

18 December 2006

EU-LEBANON ACTION PLAN

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

Thank you for your explanatory memorandum dated 4 October 2006 which Sub-Committee C considered at its meeting on 12 October. The Sub-Committee agreed to clear the document from scrutiny.

We would like to stress the continuing need for EU engagement in the Middle East Peace Process. We would appreciate your analysis of progress made on the Peace Process and of the role that has been played by the EU to date, as well as your views on what else the EU might do to achieve lasting peace in the region.

12 October 2006

EU-SOUTH AFRICA STRATEGIC PARTNERSHIP

Letter from Rt Hon Geoff Hoon MP, Ministre for Europe, Foreign and Commonwealth Office, to the Chairman

The EU strategy for Africa entitled “The EU and Africa: Towards a Strategic Partnership” was agreed by Heads of State and Government at the December 2005 European Council during the UK Presidency. It provides the European Commission and EU Member States with a framework of action to support Africa over a 10-year period.

In 2006, the Filmish Presidency, the European Commission and the Council Secretariat jointly produced a progress report entitled, “The EU and Africa: Towards a Strategic Partnership—The Way Forward and Key Achievements in 2006”. This was presented to EU Heads of State and Government at the European Council on 14–15 December. The European Council reaffirmed, in Conclusions, its earlier commitment to work towards a joint EU-Africa strategy and underlined the importance of monitoring progress towards all of the EU’s commitments to Africa including the 2005 aid volume targets.

As the title suggests, the report is split into two sections, summarising progress on implementation in 2006 and identifying priority actions for 2007. The report notes substantive progress in many areas including work on increased dialogue and cooperation, peace and security, human rights and good governance, regional integration, trade, private sector development and interconnectivity, migration and aid. The four priority
areas for action in 2007 are strengthening the strategic partnership with Africa, supporting Africa’s quest for peace and good governance, promoting growth and sustainable development, and investing in people.

We welcome the report as an accurate representation of EU support to Africa in 2006. There has been much activity to implement commitments and real progress has been made. On peace and security, agreement has been reached to provide further and increased funding through the Africa Peace Facility to support the African Union. EU election observation missions have been deployed in the Democratic Republic of Congo, Uganda, Zambia and Mauritania. Member States have agreed to make over €20 billion in EC funds available to Africa between 2007 and 2013 including targeted support for peace and security, governance and infrastructure.

But we need to maintain momentum on delivery. The UK places particular importance on the forward look section of the report. We have been emphasising to EU partners, and will continue to do so, the need to up the pace on delivery, particularly on trade and access to basic services such as health, education and water. In addition to implementation of these commitments, the EU will build on the Strategy through the negotiation next year with African partners of a Joint Strategy encompassing joint commitments, and which we hope will be endorsed at an EU-Africa Summit soon.

We believe that the report and the European Council’s reaffirmed commitment has helped to maintain focus and momentum on the EU’s commitments to Africa. We are also pleased that, as proposed during a recent House of Lords debate on EU-Africa, progress on the strategy will henceforth be reviewed on an annual basis rather than bi-annually as had originally been agreed.

8 January 2007

EU-THIRD COUNTRY AGREEMENTS: TAKING ACCOUNT OF BULGARIA AND ROMANIA

Letter from Lord Triesman, Parliamentary Under-Secretary, Foreign and Commonwealth Office, to the Chairman

Following the accession of Bulgaria and Romania, it has become necessary to update a number of EU-Third Country Agreements. A full list of these agreements is attached (Annex A).

I am submitting for Scrutiny an example of one such agreement, the amendment of the Partnership and Co-operation Agreement with Moldova, alongside this letter. This is the second EU-Third Country Agreement to be prepared by the Commission. The first such proposed amendment, the EU-Mexico Association Agreement, cleared Scrutiny in January 2007, (but has yet to be adopted by Council).

The amending of these agreements is purely a technical matter, simply incorporating the new Member States as parties to the Agreement. No further changes are envisaged. In light of this, I hope you will agree that it will not be necessary to submits EMs for the future amendments to the EU-Third Country Agreements listed in Annex A.

The exception to the above is the Partnership and Co-operation Agreement with Russia. Geoff Roon wrote to you about this issue on 2 February 2007.

13 February 2007

Annex A

LIST OF AGREEMENTS TO BE UPDATED

— Association Agreement with Turkey and relevant Association Council Decisions
— Stabilisation and Association Agreement with Croatia
— Stabilisation and Association Agreement with Macedonia
— Interim Agreement on Trade and Trade-related matters with Albania
— Stabilisation and Association Agreement with Albania
— EU Partnership Agreement with India
— EU Partnership Agreement with China
— Canada: Bilateral Agreement on Trade in Wines and Spirit Drinks
— EU-Chile Association Agreement
— EU-Andean Countries Agreement
— EU-Central America Political Dialogue and Co-operation Agreement
— EU Association Agreements with all the Mediterranean Countries
— Partnership and Co-operation Agreement with Armenia
— Partnership and Co-operation Agreement with Azerbaijan
— Partnership, Co-operation and Development Agreement with Georgia
— Partnership and Co-operation Agreement with Kazakhstan
— Partnership and Co-operation Agreement with Kyrgyzstan
— Partnership and Co-operation Agreement with Ukraine
— Partnership and Co-operation Agreement with Uzbekistan
— Partnership and Co-operation Agreement with Turkmenistan
— Partnership and Co-operation Agreement with Ukraine
— Trade and Co-operation Agreement with Mongolia
— European Community-South Africa Trade, Development and Co-operation Agreement
— EU-Norway Bilateral Trade Agreement
— EU-Iceland Bilateral Trade Agreement
— European Economic Area Agreement
— EU-Faroe Island Bilateral Trade Agreement

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

Lord Triesman wrote to you on 13 February 2007 proposing that it should not be necessary to submit Explanatory Memoranda in respect of Protocols that amend EU-Third Country Agreements by incorporating Romania and Bulgaria. Your Committee has, however, requested that a short Explanatory Memorandum be submitted for all such Protocols.

Since this exchange of letters, the Council Secretariat informed us on 20 March that Council and Commission Decisions on the signing, provisional application and conclusion of a Protocol to incorporate Romania and Bulgaria into the EU-Ukraine Partnership and Co-operation Agreement are due to be approved at the Economic and Financial Affairs Council on 26 March. Approval by the Council on this date would enable the Protocol to be signed by the EU and Ukraine during the proposed visit of the Ukrainian Prime Minister to Brussels on 27 March.

I do not wish to hold up Council approval of these documents and am therefore writing to inform you that I will, in all likelihood, have to approve the documents prior to completion of scrutiny. Given the straightforward nature of these documents, as explained by Lord Triesman in his letter of 13 February, I hope your Committee will understand my decision.

22 March 2007

EU-UKRAINE

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

On 22 January the General Affairs and External Relations Council adopted negotiating directives for a new enhanced agreement between the EU and Ukraine. The Council also adopted conclusions, which I enclose at Annex A. Negotiations on the new enhanced agreement are expected to be launched at the EU-Ukraine Ministerial meeting in Kiev on 6 February.

The negotiating directives are restricted documents setting out the mandate granted to the Commission to undertake negotiations with Ukraine on behalf of the Council. As these directives represent a negotiating position they are not in the public domain and it is not therefore possible for me to submit them for scrutiny. I will, however, submit a full Explanatory Memorandum when a draft Council Decision to conclude the Agreement is submitted to the Council on completion of the negotiations.
The aim of the forthcoming negotiations will be to conclude an agreement with Ukraine to replace the existing Partnership and Co-operation Agreement, which was signed on 14 June 1994. The new enhanced agreement will be comprehensive, reflecting the existing wide range of co-operation in economic and political areas and developing these areas further. Wherever possible, it will go above and beyond existing commitments in the Partnership and Cooperation Agreement. A key element of the new enhanced agreement will be the inclusion of a deep and comprehensive free trade agreement. The Commission will inform the Council on a regular basis on progress of the negotiations.

The General Affairs and External Relations Council agreed on 21 February 2005 to negotiate a new enhanced agreement once Ukraine had fulfilled the main political priorities of its European Neighbourhood Policy Action Plan. Ukraine was deemed to have met this requirement following the free and fair conduct of the March 2006 Parliamentary elections. The Government strongly supports enhancing the relationship between the EU and Ukraine as a means of supporting Ukraine’s policy of EU integration. We will support the conclusion of a substantive and enhanced new agreement that ensures continuing economic and political reform and leaves the door open to eventual EU accession.

29 January 2007

Annex A

Relations with Ukraine

Council conclusions

The Council adopted negotiating directives for a new enhanced agreement between the European Union and Ukraine. Negotiations are due to be launched at the EU Troika—Ukraine ministerial meeting on 6 February 2006 in Kiev.

At the same time, the Council adopted the following conclusions:

1. The Council and the Commission recall that the European Union has acknowledged Ukraine’s European aspirations and has welcomed Ukraine’s European choice in the Council conclusions and in the EU-Ukraine Action Plan, both adopted on 21 February 2005. The EU recognises and welcomes the progress Ukraine has made in consolidating democracy.

2. The Council and the Commission declare that:
   — the European Union maintains its strong commitment to supporting Ukraine’s political and economic reforms, aimed at further strengthening democracy, stability and prosperity in the country, and wishes to reinforce this commitment through a new enhanced Agreement;
   — through this Agreement, the European Union aims to build an increasingly close relationship with Ukraine, aimed at gradual economic integration and deepening of political co-operation; and
   — a new enhanced Agreement shall not prejudge any possible future developments in EU-Ukraine relations.

3. The Council and the Commission recall the conclusions of the European Council of 14–15 December 2006 reaffirming its resolve to strengthen the European Neighbourhood Policy (ENP) in order to consolidate a ring of prosperity, stability and security based on human rights, democracy and the rule of law in the Union’s neighbourhood.”

EU BORDER ASSISTANCE MISSION AT RAFAH (EU BAM)

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

On 29 September the Political and Security Committee gave its support to an extension of the EU Border Assistance Mission (EU BAM) at Rafah for a further six months until May 2007 and tasked the preparation of a draft Joint Action on this basis.

As you know, the mission plays a key confidence-building role in the region and works to increase Palestinian capacity in border control. I wanted to alert you now as it is possible that work preparing the Joint Action will be taken forward rapidly. I will ensure you are provided with an Explanatory Memorandum when a draft text becomes available.

12 October 2006
Letter from the Chairman to Rt Hon Geoff Hoon MP

Thank you for your explanatory memorandum dated 25 October 2006 which Sub-Committee C considered at its meeting on 2 November 2006. The Sub-Committee agreed to clear the document from scrutiny, but requested some further information.

The explanatory memorandum stated that the border post was re-opened at the beginning of Ramadan after a gap of more than 3 months following the kidnap of an Israeli soldier. Is it now fully operational? We would also like to know your view on the allegations by Israel that arms are being smuggled in tunnels near the border crossing.

Finally, we would be grateful for information about the effect, if any, that the election of the Hamas government has had on the operation of the Mission.

2 November 2006

Letter from Rt Hon Geoff Hoon MP to the Chairman

Thank you for your letter of 2 November, relaying the Sub-Committee’s request for further information on the operations of EUBAM Rafah.

You ask whether the Rafah Crossing Point is now fully operational, following its closure after the kidnap of the Israeli soldier Corporal Shalit on 26 June. Rafah has been open intermittently since June. It is not fully operational, but was open for two days in the week from 6 to 12 November, enabling 2,615 Palestinians to use the crossing. We and our EU colleagues continue to press the Government of Israel to open the crossing on a regular and predictable basis.

You ask about arms smuggling in tunnels near the crossing. Smuggling through tunnels on the Gaza border is a long-standing problem, which occurred prior to the Israeli disengagement from Gaza. EU border monitors are not mandated to tackle this problem. We are however discussing this issue with regional and international partners.

Finally, you ask about the effect, if any, of the election of the Hamas government on the operation of the Mission. From the date of Hamas’ election, 25 January, to the kidnap of Cpl Shalit, 26 June, the crossing was operational nearly every day, as it was in the period prior to Hamas’ election, from 25 November to 25 January. The Mission itself has continued to be operational during this period. In line with EU policy, Mission staff have not had contact with ministers in the Hamas government since their election. Palestinian officials operating at the crossing report to President Abbas.

28 November 2006

EU MILITARY OPERATION IN SUPPORT OF THE UN MISSION IN THE DEMOCRATIC REPUBLIC OF CONGO (5900/07)

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

With the Christmas recess fast approaching I thought you might like to be aware that EUFOR RD Congo’s mission—the ESDP mission in support of MONUC—came to a successful end on 30 November. It is fitting that this should come a matter of days after the Supreme Court confirmation of the election result and Vice President Bemba’s public statement of his commitment, notwithstanding his disappointment, to take part “in a strong republican opposition in the interests of the nation”. EUFOR troops will be withdrawing from their bases in the DRC and the Gabon between now and mid-December.

The Committees previously asked for details of the make up of this force. I enclose a chart showing the breakdown of troop contributions to the mission.

7 December 2006
Annex A

Country | Troop Contribution
---|---
France | 613
Germany | 351
Sweden | 50
Netherlands | 40
Portugal | 52
Greece | 20
Belgium | 71
Poland | 97
Spain | 90
Finland | 11
Italy | 55
Turkey | 14
Switzerland | 2

Letter from Rt Hon Geoff Hoon MP to the Chairman

As I mentioned in my letter of 7 March 2007 the EU military mission to support the UN peacekeeping mission (MONUC) during elections in the Democratic Republic of Congo was completed in November 2006. This was formalised by Joint Action 5900/07, which was approved by Council on 20 February 2007. I attach the Joint Action along with an Explanatory Memorandum.

I apologise for the delay in depositing the document in Parliament in this case. As you know, we take our commitment to Parliamentary Scrutiny extremely seriously and have made every effort to keep you informed about this mission (letters 14 June 2006, 9 August 2006, 7 December 2006 and 7 March 2007). However, due to the administrative nature of this Joint Action, we unfortunately did not immediately recognise the need for Scrutiny. For your information, we are amending our guidelines in order to prevent this from re-occurring.

20 March 2007

EU STRATEGY AGAINST THE PROLIFERATION OF WEAPONS OF MASS DESTRUCTION

Letter from Kim Howells MP, Minister of State, Foreign and Commonwealth Office to the Chairman

In my letter to you of 11 July 2006, I undertook to keep you informed of progress on the EU Weapons of Mass Destruction (WMD) Monitoring Centre. I am now enclosing for your information the Concept Paper concerning the Monitoring Centre. This paper was approved by the Political and Security Committee on 21 November and will now be sent to the General Affairs and Economic Relations Council on 11 December, where we do not expect further discussion.

The paper sets out how the Council Secretariat, the Commission and Member States will work together on the implementation of the EU Weapons of Mass Destruction (WMD) Strategy. It is not creating a new structure or new budget lines, but is making official a current working method. Following endorsement by the General Affairs and Economic Relations Council, those involved will then start to work together along the lines set out in the paper.

We have worked with the Council Secretariat on the detail of this Concept Paper and feel that this final version provides useful guidance for practical working methods, which will help in the implementation of the EU WMD Strategy. I know that your Committee has been concerned about possible duplication with the work of the NATO WMD Centre and we have worked to ensure that this is not the case.

29 November 2006

5 Refers to “ATHENA Mechanism for Common Funding of ESOP Military Operations”.
Letter from Kim Howells MP to the Chairman

The European Council endorsed the following texts on 21 December 2006:

*Six Monthly Progress Report on the implementation of the EU Strategy against the Proliferation of Weapons of Mass Destruction.*

*Updated list of priorities on the implementation of the EU Strategy against the Proliferation of Weapons of Mass Destruction.*

I am writing to submit these documents to your committee for information, in response to your request of 18 November 2005 to Douglas Alexander.

The Six-Monthly Progress Report concentrates on the main developments and trends rather than containing an exhaustive repetition of all the items mentioned in the original Strategy.

Your committee has previously shown interest in the WMD Monitoring Centre and requested we keep you updated of its progress. You will note from the progress report that on 11 December 2006 the Council endorsed the draft concept paper on the Monitoring Centre. In my letter to you of 29 November 2006 I informed you of the details of this paper, explaining that it sets out how the Council Secretariat, the Commission and the Member States will work together on the implementation of the EU WMD Strategy.

The progress report also calls attention to the Biological and Toxins Weapons Convention (BTWC) Review Conference that took place in November and December of 2006. This is a subject I know is also of interest to you. In a letter of 16 January 2007, I said that the main objectives of the common position, to strengthen further the BTWC and to promote a successful outcome of the Review Conference, were achieved. I also mentioned that some proposals were put forward including the creation of an implementation support unit and work to promote universal accession by all states to the BTWC.

The progress report highlights recent Council Joint Actions in support of the International Atomic Energy Agency (IAEA) and Community activities in Russia and the Commonwealth of Independent States (CIS). Further it mentions work on re-directing former weapons scientists to prevent proliferation of expertise. EU support for the Fissile Material Cut-Off Treaty (FMCT) and actions to prevent missile proliferation and to reinforce the efficiency of export controls.

I am also submitting to you the updated list of priorities on the Implementation of the EU WMD Strategy. This is based on the list of priorities endorsed by the General Affairs and External Relations Council (GAERC) in 2005 and takes into account the experiences gained and the new challenges that have arisen over the last 12 months, including the North Korean nuclear test and continued Iranian non-compliance over its obligations.

We feel that these are good papers, showing useful progress and development from the initial EU strategy. They also reflect considerable UK input and in general support our counter-proliferation policies.

29 January 2007

EURO-MEDITERRANEAN PARTNERSHIP: TIME TO DELIVER (14822/06)

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

The above document was considered by Sub-Committee C on 23 November.

The Sub-Committee welcomed the Communication from the Commission on the Tampere Euro-Mediterranean Foreign Affairs Ministers Conference and agreed with the Government’s view that it is a very useful summary of activities undertaken since last year’s summit on the Barcelona process, and serves as a good basis for the discussion at Foreign Ministers level.

The Sub-Committee are pleased that the Government has pledged to continue to work for a stronger emphasis on the commitments made under the political and security heading, and would hope that this approach continues to guide Government policy under the Barcelona process and in the framework of the European Neighbourhood Policy.

The Sub-Committee would have liked to see an analysis of the financial implications of the proposed Work Plan for 2007 in the Explanatory Memorandum, even though the Euromed Five-Year Work Programme will be “taken forward through the European Neighbourhood and Partnership Instrument”. We would therefore be grateful if you could provide a country-by-country summary of the purpose, level and sources of financing for Euromed activities in 2007.
With these provisos, however, we have decided to clear the document from scrutiny.

28 November 2006

Letter from Rt Hon Geoff Hoon MP to the Chairman

Thank you for your letter of 28 November which welcomed the above Commission Communication and cleared the document from scrutiny.

Your Committee sought further details of the financial implications of the proposed Work Plan for 2007. Under the next Financial Perspective, Euromed regional activities will be mostly financed by EC funds from the European Neighbourhood and Partnership Instrument. On an ad hoc basis, EU Presidencies or other EU or Partner countries can also provide financial and/or logistical assistance, especially when seminars or meetings are taking place in their country.

The Commission’s Regional Indicative Programme for the Southern Region has allocated €10 million to take forward regional EuroMed activities planned for 2007.

13 December 2006

Letter from Rt Hon Geoff Hoon MP to the Chairman

Your Committee cleared the Commission Communication The Euro-Mediterranean Partnership: Time to Deliver on 9 November 2006. This Communication provided the basis for the preparations for the Euro-Mediterranean Foreign Ministers Conference, which took place in Tampere, Finland, which Baroness Royall of Blaisdon attended for the UK government. As requested by the House of Commons Scrutiny Committee, I am writing to inform you of the outcome of the Ministerial Conference, and outline progress that has been made since then.

The Tampere Conference

At Tampere, the Finnish Presidency succeeded in securing forward-looking Conclusions that were agreed by all 35 EuroMed Partners. This is only the second time that EuroMed Foreign Ministers have been able to adopt conclusions unanimously. Ministers reiterated their commitment to take forward the Barcelona Summit Five-Year Work Programme and to implement the Code of Conduct on Countering Terrorism. To this end, they agreed to undertake a wide range of activities in 2007, including:

- EuroMed Seminars on the role of the media in preventing incitement to terrorism and on ensuring respect for human rights in the fight against terrorism in accordance with international law;
- Pursuing negotiations on the progressive liberalisation of trade in services and agriculture;
- A EuroMed Ministerial Conference on Energy in 2007. Partners also agreed to increase co-operation on energy security and climate change;
- A Euromed Ministerial Conference on Higher Education and Scientific Research in 2007. Ministers also reiterated their commitment to increase significantly funding devoted to education in the Mediterranean area;
- EuroMed Ministerial meeting on migration in 2007; and
- Agreement to hold a EuroMed Foreign Ministers Conference at the end of each year.

Progress since Tampere

The fact that the Conclusions were agreed by all 37 partners, and that the Summary of Initiatives covers the whole of 2007 rather than the usual six-month forecast by incoming presidencies, has enabled more effective and comprehensive planning of EuroMed work during the German and Portuguese Presidencies of the EU. And UK officials have played an active part in this planning, through, for example, preparations for the Energy and Migration Ministerial meetings in September and November, and the seminar on the role of the media in preventing incitement to terrorism that will take place in May. We are also working with partners on the design of the proposed Governance Facility. We have stressed the importance of taking forward work on the proposed seminar on best practice in elections, which remains under discussion among EuroMed officials. Another key area of work for the UK is encouraging greater focus on climate change issues, for example by contributing a UK paper to discussions on the environment at the EuroMed meeting in April.

In conclusion, we continue to work to ensure that the Euro-Mediterranean Partnership effectively strengthens cooperation between the EU and Southern Partners in important areas.

29 March 2007
EUROPEAN COMMUNICATION POLICY (5992/06)

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

The FCO earlier sent an Explanatory Memorandum about the White Paper on a European Communication Policy (5992/06) from the Commission on 9 March 2006. I now enclose the UK’s formal response to the Commission White Paper for your information.

26 October 2006

Annex A

RESPONSE TO THE COMMISSION ON THE WHITE PAPER ON A EUROPEAN COMMUNICATIONS POLICY

1. The European Commission’s White Paper on a European Communications Policy invites ideas on a forward-looking agenda for better communication to enhance the public debate in Europe. The United Kingdom responds below along the following themes: “defining common principles”; “empowering citizens”; “working with the media and new technologies”; “understanding European public opinion”; and “doing the job together”.

DEFINING COMMON PRINCIPLES

2. The UK agrees that participation in common information and communication activities is important. We question the necessity of a charter or framework document for this to be achieved. While discussions since the White Paper was published have suggested that such a document would not apply to Member States, it is unclear how defining common principles in a charter, Code of conduct or other instrument would add value to the existing frameworks of the EU Institutions. We would welcome more detail on this proposal and in particular the legal status and implications of such a document.

EMPowering CITIZENS

3. The UK agrees that civic education (known as “citizenship” in the UK education system) is crucial, and it has been statutory in England since 2002. UK Government policy is to teach about the nature and roles of all democratic institutions, including UK Parliament and the European Union and also the United Nations (UN), the North Atlantic Treaty Organisation (NATO) and the Commonwealth. Programmes such as the Lifelong Learning Programme and Youth in Action can be of direct support in fostering intercultural dialogue, improving educational outcomes and tackling exclusion.

4. The UK does not see the need for a new structure to bring together European teachers. This is already provided for through the Lifelong Learning programme, including in the Comenius Sub-programme and the Jean Monnet sub-programme, and there is sufficient flexibility built into the programme to do more work in this area if Member States agree it is a priority.

5. The UK is keen for any pan-European communications activities to address issues of most concern to the public that matter to it. We welcome the Commission’s proposals to enhance the Institutions’ work on communications, including a review of the Commission’s minimum standards of consultation.

6. We would welcome further detail on proposals for joint open debates between the Commission, Parliament and the The European Parliament by its very nature is representative of a wide-range of views.

WORKING WITH THE MEDIA AND NEW TECHNOLOGIES

7. The UK agrees that media coverage of European issues is vital, including to highlight Europe’s role on issues of public concern such as environment and energy. But whilst more could be done to involve the media more effectively in communicating on Europe, it is unclear how an over-arching European communication policy would encourage achievement of this goal. We would encourage the EU Institutions to explore ways of better providing the media with information materials adapted to the individual needs of each Member State.
8. The UK supports better equipment of EU Institutions with communication tools and capacities. But we would need to see the case for a possible upgrade of Europe by Satellite, including costs associated with this project.

9. The UK remains to be convinced about the need for a European Programme for Training in Public Communications for officials from European and national institutions. There is no “one size fits all” approach across 25 Member States and the Institutions. The UK, however, does see value in communications professionals from different Member States sharing best practice. The Information Working Group (IWG) already provides a forum where Member States can do just this, and we would encourage Member States to continue to send relevant professionals to the sessions. It would be useful for the IWG to continue to run focussed training sessions on specific themes, such as Working with Citizens and Working with Stakeholders held under the UK Presidency, and the session on use of the internet in communicating Europe held under the Austrian Presidency.

10. With regard to the proposed report on information technologies and democracy in Europe by the European Round Table for Democracy, the UK would welcome further information on what added value such a report would provide.

UNDERSTANDING EUROPEAN PUBLIC OPINION

11. The UK would welcome the opportunity to explore new avenues of cooperation with the EU Institutions under this heading. Eurobarometer is a valuable source of information but we could explore ways of improving the quality and quantity of the information available. Member States could make a valuable contribution to the design of the surveys. Country specific “Flash” surveys with questions tailored to the circumstances in individual Member States may complement information already gathered in the Standard Eurobarometer surveys.

12. Another way of maximising the value of the surveys would be to improve the usefulness of the data provided on the Eurobarometer website. Surveys are currently published on the Eurobarometer website in a PDF format. While the analytical reports are a useful source of information, it could be helpful to explore ways of expanding the range and presentation of information available through the interactive search system. This would be simple to do and we believe would improve the presentation and accessibility of the materials available.

13. Establishing a network of national experts would enhance this further. A network could add an external dimension to the gathering of public opinion data, offering the opportunity for information gathering and sharing of best practice across the EU.

14. Information gathered by an independent observatory for public opinion could be a valuable resource. The independent status of such an agency would underline the credibility of the information gathered. However, we would welcome further explanation as to how the independence of such a body would be guaranteed as well as further detail on how the Commission propose it should be funded. The White Paper is also unclear about how a new institution would co-exist with the current Eurobarometer structure.

DOING THE JOB TOGETHER

15. The UK welcomes the steps by the Institutions as outlined in the White Paper to become more responsive, open and accessible. We agree with the Commission on the need to communicate more effectively on the workings of the Institutions and make them more accessible and transparent. The UK looks forward to exploring ways of further cooperation with the European Commission Representation and European Parliament Offices in the UK on these issues.

16. The UK agrees with the Commission that joined-up working in some areas could enhance the effectiveness of EU communications activities at local, regional, national and EU levels. A good example of this is the “Building a Bridge between Europe and its Citizens” project led by the Scottish Executive working closely with the European Commission and the Scottish and European Parliaments. This is a valuable project exploring what lessons can be drawn from Scottish consultation and legislative processes to help the European Union better connect with the citizens it serves.

17. It would be for national parliaments to decide what role they would like to play in initiatives in this arena but we would encourage both EU Institutions and national parliaments to explore this option further.
EUROPEAN DEFENCE AGENCY—STEERING BOARD MEETING, OCTOBER 2006

Letter from Des Browne MP, Secretary of State, Ministry of Defence to the Chairman

You will be aware that the Ministerial Steering Board for the European Defence Agency (EDA) met on 3 October. Prior to this meeting I wrote to you with the agenda, draft papers and an outline of the likely points of discussion.

I enclose the final versions of the papers that were considered at the EDA Steering Board (not printed). As I warned in my letter of 27 September 2006,9 these papers were amended following an official level meeting prior to the Steering Board. The main changes were that the agenda item on the Defence R&T Joint Investment Programme on Force Protection was not discussed as an “A Point”, but an information paper on this matter was discussed, and that the EDA Priorities and Financial Framework paper was amended, with the proposed net increase in core staff being reduced from 10 to six per year.

You will be aware that EU Defence Ministers met for an informal meeting on 2–3 October 2006. In line with our commitment to transparency of ESDP-related business, the commentary at Annex (not printed) therefore outlines the discussions that took place at the informal meeting of Defence Ministers and sets out the outcome of the EDA Steering Board on 3 October.

20 October 2006

EUROPEAN DEFENCE AGENCY—STEERING BOARD MEETING, NOVEMBER 2006

Letter from Des Browne MP, Secretary of State, Ministry of Defence, to the Chairman

The next European Defence Agency (EDA) Steering Board meeting will be held on 13 November. I would therefore like to inform you of the main items I expect to be discussed at this meeting. I enclose for your information the draft agenda and draft papers that have been circulated by the EDA (not printed). The final agenda and papers for this meeting will be issued by the Agency only during the week beginning 6 November, following an official level Preparatory Committee meeting, thus I am not able to provide these to you at present.

Subject to further work in the Preparatory Committee, the Steering Board will be invited to agree three items as an “A” point. The first of these, Revision of the Financial Rules of the EDA, is the output of a nine month consultation process involving Finance experts from participating Member States, a process in which MOD officials have been heavily involved. I will therefore be willing to accept the Revision at the Steering Board.

The second “A” point deals with the Modalities for the establishment of the EDA Staff Committee. The EDA Staff Regulations provide for the establishment of a Staff Committee, and this point defines the way in which this will be established. I fully support the establishment of such a committee within the EDA, and will be willing to accept this at the Steering Board.

The final “A” point deals with the draft EDA 2007 budget. The proposed budget is lower than that for the current year. I informed Javier Solana in a letter dated 26 October that I supported the draft 2007 budget, and will therefore accept this point at the Steering Board. However, this “A” point is subject to the General Affairs and External Relations Council approval of the EDA 2007–09 Financial Framework.

The next agenda item is on the Defence R&T Joint Investment Programme on Force Protection. As I informed you in my letter dated 27 September, we have already informed the EDA that we will not be taking part in this programme as it represents a very high degree of duplication with our national programme. However several other Member States wish to participate in the programme, and I will therefore support the establishment of this Programme at the Steering Board.

The EDA will next ask the Steering Board to approve its 2007 Work Programme. The 2007 Work Programme is in line with the Agency’s priorities, as agreed at the Levi Steering Board held on 3 October, and I will be giving it my support at the Steering Board.

The next agenda item deals with the Indicators and Strategic Targets work being conducted by the EDA. I regard this work as important in encouraging participating Member States to improve their levels of defence expenditure and meet appropriate national targets, enabling them to contribute more fully to ESDP and other operations. Currently UK spending exceeds the national targets which the EDA has proposed. The EDA have also proposed a collective target of increasing the percentage of collaborative R&T spending to 20%. I have doubts as to whether this target is realistic and I would certainly not support collaboration for its own sake. But noting that it is not binding on individual Member States I am content to accept it as a long term collective...

aspiration if it is part of a deal that sees worthwhile national targets accepted by other participating Member States. I feel it is important that other Member States are accountable for shouldering an appropriate portion of the security burden, and will therefore support the adjusted list of indicators and strategic targets.

The final matter on the agenda is that of the Software Defined Radio programme. The EDA may bring an information paper on the programme to Ministers; but this is subject to further discussion at the Preparatory Committee.

I would finally like to take this opportunity to thank both the Lords and Commons scrutiny committees for their comments on the MOD scrutiny guidelines which I sent you on 28 September. We will review our guidelines in the light of these comments and I will send both Committees a copy of the new edition.

I will write to you after the 13 November to report on the outcome of the Steering Board.

1 November 2006

Letter from Des Browne MP to the Chairman

I wrote to you on 1 November about the meeting of the Ministerial Steering Board for the European Defence Agency (EDA). I am now writing to inform you of the outcome of this meeting.

I enclose the final versions of the papers that were considered at the 13 November Steering Board (not printed). As I highlighted in my previous letter there were changes to these papers following an official level meeting prior to the Steering Board. Additionally, business in the Steering Board was affected by discussions within the General Affairs and External Relations Council (GAERC) prior to the Steering Board.

The main change was that the “A Point” on the EDA 2007 Budget was not discussed in the Steering Board because the GAERC did not approve the EDA 2007–09 Financial Framework. The GAERC was unable to agree on how quickly we should allow the Agency’s operational budget to grow. My position was that we could not support the operational budget increasing to €10 million by 2009 as proposed by the EDA. Not only did this amount to 100% increase in the Operational Budget over three years, but the EDA was unable to justify precisely what it would spend the money on. The GAERC was unable to reach a consensus at any lower level and therefore agreed to postpone by another year setting a three year Financial Framework for the Agency. In the absence of a legally binding three year Framework the Steering Board was not competent to adopt the 2007 budget, and therefore this was adopted by the GAERC itself. While the operational portion of the 2007 budget has increased, the overall EDA budget for 2007 (comprising the operational and functional budgets) is slightly less than that for 2006.

I believe it is important that the EDA understands that it is operating in a resource constrained environment, and that any requests for additional funding must be based upon clear evidence that they will provide value for money. Indeed, the UK argues that the Agency does not need a large operational budget with which to “pump prime” collaborative projects or commission research in its own right and should operate by facilitating collaboration between interested Member States. This vision of the Agency is not shared by all participating Member States and this is the underlying reason for the GAERC being unable to achieve a compromise.


The attached commentary outlines the discussions that took place in the EDA Steering Board on 13 November (not printed).

I also enclose two Explanatory Memoranda (not printed) covering: the Annual Report by the Head of the European Defence Agency to the Council, which was noted by the GAERC; and the Council Guidelines for the European Defence Agency’s work in 2007, which were adopted by the GAERC.

27 November 2006

EUROPEAN INSTRUMENT FOR DEMOCRACY AND HUMAN RIGHTS

Letter from the Chairman to Rt Hon Hilary Benn MP, Secretary of State for International Development, Department for International Development

Thank you for your letter dated 10 August 2006 which Sub-Committee C considered at its meeting on 12 October. The Sub-Committee recommended that the document be cleared from scrutiny.

We are grateful for the reassurances given in your letter on possible duplication of work on human rights and on the need for a global perspective, and ask for an update on any amendments made to the text since we examined the document in July 2006.

12 October 2006

EUROPEAN NEIGHBOURHOOD POLICY ACTION PLAN FOR SOUTH CAUCASUS COUNTRIES
(ARMENIA, AZERBAIJAN AND GEORGIA)

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

I am writing in my capacity as Duty Minister to let you and your Committee know of our plans to adopt the Council Decision at the 13–14 November General Affairs and External Relations Council of the European Neighbourhood Policy Action Plan for Armenia. The EU plans to adopt the Action Plan at the Co-operation Council with Armenia on 14 November. The Action Plan, one of three for all the South Caucasus countries (Armenia, Azerbaijan and Georgia), aims to promote economic integration with the EU and the deepening of political co-operation. Implementation will also promote harmonisation of Armenian legislation, norms and standards with the European Union.

The Action Plans define a set of priorities tailored to reflect the specific state of affairs within each country, its needs and capacity, and the interests of the EU and the country concerned. They include work in important areas for us such as human rights, democracy, good governance and economic reform, as well as areas of joint interest such as conflict prevention and resolution, with each South Caucasus country involved in an unresolved conflict (in Armenia’s case Nagorno Karabakh, between Armenia and Azerbaijan). A new funding stream, the European Neighbourhood and Partnership Instrument, will support the agreed priorities in the Action Plans.

In order to secure adoption of the Action Plan at the meeting of the EU-Armenia Co-operation Council this has had to be adopted at the GAERC on 13 November. An administrative failure on the part of my officials and the swift referral of the agreed South Caucasus Action Plans to the General Affairs and External Relations Council caused the failure to deposit this Memorandum with your Committee in good time.

I apologise unreservedly for this and assure you that measures are being taken to address this failure, and to prevent it occurring again. To allow the adoption of the Action Plan at the EU-Armenia Co-operation Councils on 14 November, I hope your Committee will understand my decision to allow the Decision before scrutiny had been completed.

13 November 2006

Letter from Rt Hon Ian McCartney MP to the Chairman

I am writing in my capacity as Duty Minister to let you and your Committee know of our plans to adopt the Council Decision at the General Affairs and External Relations Council of the European Neighbourhood Policy Action Plan for Azerbaijan, on 13 – 14 November. The EU plans to adopt the Action Plan at the Co-operation Council with Azerbaijan on 14 November. The Action Plan, one of three for all the South Caucasus countries (Armenia, Azerbaijan and Georgia), aims to promote economic integration with the EU and the deepening of political co-operation. Implementation will also promote harmonisation of Azeri legislation, norms and standards with the European Union.

The Action Plans define a set of priorities tailored to reflect the specific state of affairs within each country, its needs and capacity, and the interests of the EU and the country concerned. They include work in important areas for us such as human rights, democracy, good governance and economic reform, as well as areas of joint interest such as conflict prevention and resolution, with each South Caucasus country involved in an unresolved conflict (in Azerbaijan’s case Nagorno Karabakh, disputed between Armenia and Azerbaijan). A new funding stream, the European Neighbourhood and Partnership Instrument, will support the agreed priorities in the Action Plans.

In order to secure adoption of the Action Plan at the meeting of the EU-Azerbaijan Co-operation Council this has had to be adopted at the GAERC on 13 November. An administrative failure on the part of my officials and the swift referral of the agreed South Caucasus Action Plans to the General Affairs and External Relations Council caused the failure to deposit this Memorandum with your Committee in good time.
I apologise unreservedly for this and assure you that measures are being taken to address this failure, and to prevent it occurring again. To allow the adoption of the Action Plan at the EU-Azerbaijan Co-operation Council on 14 November, I hope your Committee will understand my decision to allow the Decision before scrutiny had been completed.

13 November 2006

Letter from Rt Hon Ian McCartney MP to the Chairman

I am writing in my capacity as Duty Minister to let you and your Committee know of our plans to adopt the Council Decision at the 13–14 November General Affairs and External Relations Council of the European Neighbourhood Policy Action Plan for Georgia. The EU plans to adopt the Action Plan at the Co-operation Council with Georgia on 14 November. The Action Plan, one of three for all the South Caucasus countries (Armenia, Azerbaijan and Georgia), aims to promote economic integration with the EU and the deepening of political co-operation. Implementation will also promote harmonisation of Georgian legislation, norms and standards with the European Union.

The Action Plans define a set of priorities tailored to reflect the specific state of affairs within each country, its needs and capacity, and the interests of the EU and the country concerned. They include work in important areas for us such as human rights, democracy, good governance and economic reform, as well as areas of joint interest such as conflict prevention and resolution, with each South Caucasus country involved in an unresolved conflict (in Georgia’s case the separatist regions of Abkhazia and South Ossetia). A new funding stream, the European Neighbourhood and Partnership Instrument, will support the agreed priorities in the Action Plans.

In order to secure adoption of the Action Plan at the meeting of the EU-Georgia Co-operation Council this has had to be adopted at the GAERC on 13 November. An administrative failure on the part of my officials and the swift referral of the agreed South Caucasus Action Plans to the General Affairs and External Relations Council caused the failure to deposit this Memorandum with your Committee in good time.

I apologise unreservedly for this and assure you that measures are being taken to address this failure, and to prevent it occurring again. To allow the adoption of the Action Plan at the EU-Georgia Co-operation Council on 14 November, I hope your Committee will understand my decision to allow the Decision before scrutiny had been completed.

13 November 2006

Letter from the Chairman to Rt Hon Ian McCartney MP

Thank you for your letters of 13 November on the Action Plans for Armenia, Azerbaijan and Georgia under the EU’s Neighbourhood Plan.

The documents were considered on 23 November by Sub-Committee C who expressed regret that the Sub-Committee had not had the opportunity to scrutinise the documents before they were agreed in Brussels, particularly given the importance attached to relations with the countries under the European Neighbourhood Policy. The Sub-Committee intends to question Mr Hoon on the substance of the Plans at the evidence session with him scheduled for 10 January.

We would like to thank you for your apology for these overrides and welcome your assurance that steps are being taken to prevent a recurrence of this problem.

27 November 2006

EUROPEAN SECURITY AND DEFENCE POLICY—MISSION FINANCING

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

I am writing to update you on the progress on the financing of two European Security and Defence Policy (ESDP) Missions. The 20 November Agriculture and Fisheries Council is due to agree new budgets for the European Union’s Police Mission in Bosnia and Herzegovina and the European Union Police Mission for the Palestinian Territories.
EU POLICE MISSION IN BOSNIA AND HERZEGOVINA

The European Union’s Police Mission in Bosnia and Herzegovina continues to play a key role supporting police reform in Bosnia. It has taken over the lead role in providing assistance in the fight against organised crime from the European Union’s military presence. The police mission continues to develop local capacity and has reported notable success in the area of public order. The head of mission’s assessment is that the local police are now able to deal with all but the most extreme security challenges. This has been achieved whilst tightening the focus of the mandate and co-locating senior staff in order to reduce the number of international staff.

The original Joint Action mandated the mission for two years until the end of 2007, as explained in our initial Explanatory Memorandum. The forthcoming Council Decision will provide 12.15 million Euros funding for 2007. In addition to covering operational costs for 2007, this sum also covers possible wind down costs for the first half of 2008. We will continue to review progress and to consult with other Member States on the future of the mission during 2007.

EUROPEAN UNION POLICE MISSION FOR THE PALESTINIAN TERRITORIES

Established as an ESDP mission on 1 January 2006, the European Union Police Mission for the Palestinian Territories aims to support the establishment of an effective Palestinian Civil Police. Unfortunately, developments in the Occupied Territories have prevented the mission from carrying out its full mandate. Following the election of Hamas in the January 2006 legislative elections, projects were suspended that could not be carried out in line with the Quartet (the EU, United Nations, United States and Russia) statements limiting engagement. The mission, however, continues to play an important evaluating and monitoring role and EU Member States are agreed that it is well placed to resume fuller engagement should the political situation change.

The mission’s mandate was agreed for three years until the end of 2008 as you will know from our Explanatory Memorandum on the initial Joint Action. The forthcoming Council Decision will provide a 2.8 million Euro budget for 2007. This is lower than this year (3.6 million Euro) because of reductions in personnel as a result of its more limited role. The mission currently comprises 21 personnel instead of the 47 originally planned.

1 November 2006

EUROPEAN SECURITY AND DEFENCE POLICY—PROSPECTIVE ACTIVITY

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

I wanted to update you on possible future European Security and Defence Policy missions. While EU agreement in all cases is still some way off, the Committee may find it helpful to have notice of upcoming developments in European Security and Defence Policy activity.

AFGHANISTAN

Following a joint Commission/Council needs assessment mission to Afghanistan in September, the Political and Security Committee agreed on 14 November to send a second fact-finding mission to Afghanistan to look at how a rule of law mission could be implemented. The fact-finding mission departed for Afghanistan on 27 November and should return on 13 December.

THE OCCUPIED TERRITORIES

On 2 October the Palestinian Authorities asked the EU to extend its border monitoring activity at Rafah to the Karni Crossing Point, the main goods crossing point for exports from Gaza. Israel has not yet made a similar request of the EU.

LEBANON

I wrote in October to inform you that a fact-finding mission was sent to Lebanon to look at possible European Security and Defence Policy activity. In the event the decision was taken that as EU Member States were already heavily engaged in supporting Lebanon, including through leadership of and contributions to UNIFIL. There was no scope for European Scrutiny and Defence Policy activity at this time.
SUDAN

The mandate of the African Union mission in Sudan is due to expire at the end of December. The African Union Political and Security Committee agreed on 30 November to extend the mission for a further six months. It is, therefore, highly likely that the EU will extend the mandate of its supporting action to the African Union Mission for the same period. This will not require a new Council Decision because provision for extensions was made in the original Joint Action, which was submitted for Scrutiny by the FCO on 6 July 2005, and cleared by both Houses in the following week.

DEMOCRATIC REPUBLIC OF CONGO

Following the report of a fact-finding mission that travelled to the Democratic Republic of Congo in October, discussions are currently underway in Brussels about the shape of a possible Security Sector Reform mission there. As Congolese ownership of Security Sector Reform is vital, no firm planning can be done until the new Democratic Republic of Congo government is in place. This is not expected before the New Year and detailed mission planning is therefore unlikely before the spring.

I will continue to ensure that you are alerted to preparations for European Security and Defence Policy activity at an early opportunity.

6 December 2006

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

I wanted to update you on work on European Security and Defence Policy missions. While agreement to new activity is still some way off, the Committee may find it useful to have notice of the following developments.

AFGHANISTAN

At the General Affairs and External Relations Council on 12 February I expect Ministers will approve a concept for a European Security and Defence Policy mission to Afghanistan. While there is much more planning to be done before a Joint Action can be agreed, this is a welcome step forward.

In the planning for a possible civilian mission to Afghanistan so far, we have secured support for a comprehensive approach in the field of policing, with linkages to the wider rule of law. Seamless operational co-operation between police and prosecution services will be important for boosting the rule of law in Afghanistan. Other Member States have also supported our view that the training and mentoring programmes should include a counter-narcotics component with the aim of complementing and integrating ongoing counter-narcotics work. There is also agreement that personnel security should be integral to mission planning.

THE DEMOCRATIC REPUBLIC OF CONGO

Plans for security sector reform activity in the Democratic Republic of Congo are progressing in Brussels. The current proposal is for the security sector reform mission (EUSec) and the policing mission (EUPol) to continue with revised mandates, allowing them to take a more strategic role in the reform of the army and police respectively. Their current mandates expire on 30 June but, in the meantime, it is important that the EU can engage effectively with the new government. The EU intends to provide two additional security sector reform experts to help the government look at reform in a more co-ordinated and strategic way. We are considering supplying one of these if the right candidate can be found.

KOSOVO

We are continuing planning with partners for a possible civilian policing mission to Kosovo. Agreement to any mission will not be possible until the UN-led Kosovo Final Status process has concluded. As you will be aware Marti Ahtisaari, the UN’s Kosovo Status Envoy, presented his status proposals to the parties on 2 February.
PALESTINIAN OCCUPIED TERRITORIES

The EU Border Assistance Mission at Rafah is due to be reviewed before its mandate expires on 24 May. The matter has yet to be discussed but we will ensure you are alerted to this and any other Joint Actions on ESDP at the earliest opportunity.

7 February 2007

EUROPEAN SECURITY AND DEFENCE POLICY—DRAFT PRESIDENCY REPORT

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

Sub-Committee C on 14 December considered the above document and cleared it from scrutiny.

The Sub-Committee has however commented that they had been given very little time to consider the document, and in future would request a longer lead time for their scrutiny, or, if that not possible because a Commission or Council document is not available, an explanatory letter with advance notice and information along the lines of your helpful letter of 6 December on “European Security and Defence Policy—Prospective Activity”. Your letter on the “Council Decision on the ATHENA mechanism for common funding of ESDP military operations” was welcome in the absence of a depositable text but, again, the Sub-Committee would have liked to have seen it earlier.

19 December 2006

Letter from Rt Hon Geoff Hoon MP to the Chairman

Thank you for your letter of 19 December about the submission of the draft Presidency Report to the Committee.

It was unfortunate that we were not able to get the report to you as soon as we would have liked. This was due to a first draft not being released by the Presidency until three weeks before the December Council which resulted in discussions on the content of the report being concluded on the eve of the Council. It was only when the report began to take its final shape—the draft mandate for the incoming German Presidency was only added 10 days before the Council—that we were able to submit it to you.

I am aware of the importance of keeping the Committee aware of developments, as I did with the two reports you mentioned in your letter. Should future Presidency Reports suffer a similar delay I will ensure that you are advised accordingly.

11 January 2007

EUROPEAN UNION INSTITUTE FOR SECURITY STUDIES (EUISS)

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

Sub-Committee C on 7 December considered the proposed Council Joint Action amending Joint Action 2001/554/CFSP and cleared it from scrutiny.

The Sub-Committee noted the report of the Secretary General/High Representative (SG/HR) with interest and are aware of the work done by the Institute. However the Sub-Committee have requested further information about the implementation of the proposals which seem to open up the potential for increased expenditure.

The Sub-Committee would like specific examples of the type of additional activity the SG/HR and the Institute have in mind (revision of Article 2). What sort of tasks would the Institute undertake from third parties, who might those third parties be and what sort of income is it envisaged that the work would generate (Article 11 (3))? Assuming a Deputy Director will be appointed, how has budgetary provision been made? The budget has shown only a modest increase in the last four years and is to be agreed by unanimity, and not by qualified majority vote. Is it envisaged that the budget will continue to be restrained, and how will this be managed if the proposals for change are adopted?
We would also be interested in the Government’s views on the questions raised in the SG/HR’s report about the longer term role of the ISS and its relationship with the Presidency, the Political and Security Committee and with the Commission, and the SG/HR’s comments in paragraph 1.3 of his report about the location of the ISS. Would this require a modification of the Joint Action? The Sub-Committee also expressed the hope that, in view of the increasing importance of the EU’s actions under the ESDP, the ISS should ensure that it has sufficient military expertise on its staff to make its contributions relevant.

12 December 2006

Letter from Rt Hon Geoff Hoon MP to the Chairman

Thank you for your letter of 12 December requesting further information about some of the changes made to the European Union Institute for Security Studies (EUISS) Joint Action.

The EUISS has established a broad network of contacts both within and outside the EU. As a consequence this has led to the Institute receiving enquiries from a range of third parties, comprising commercial companies, NGOs, and other research and academic institutes, such as the European Security and Defence College, who would like to utilise the Institute’s international expertise. At present it is not known where the majority of work would come from or what income it might generate, however, given the level of interest, it was thought appropriate to amend the Institute’s mission statement to allow it to explore the possibilities. One of the reasons behind the establishment of the Deputy Director position was to assist the Director in some of the day-to-day management duties so that more time could be spent on developing the Institute’s activities.

In establishing the Deputy Director position it was agreed that this would be budget neutral and funded from the existing budget through efficiencies. Our policy for increases to the EUISS’ budget is that these should not be beyond the French rate of inflation, a policy that is supported by all other Member States who contribute to the EUISS’ budget. The proposed changes will not alter this position. On the contrary, by allowing the EUISS to take on outside work, the hope is that it will enable it to generate extra income and so avoid the need for Member States to increase their contributions beyond the French rate of inflation.

With the continuing evolution of CFSP and ESDP it is not possible to say with any certainty how the EUISS’ role and relationship with other EU bodies might evolve over the long term. We do not however foresee it changing dramatically from the role it currently plays. The EUISS has an important and unique role in providing Member States with research and analysis and we will continue to support those activities.

The EUISS was formally a subsidiary body of the Western European Union and was based at its offices in Paris, from where it has continued to operate. The EUISS has not indicated previously that a move to Brussels would be beneficial to its work. Should it do so in the future, we, along with other Member States, would consider the merits of a move at the appropriate time. Whether a change of role or location would require a modification of the Joint Action, could only be considered once the extent and scope of any changes are known.

As an academic institution we would not expect to see a serving member of military staff working within the EUISS. However, we agree that it is important for it to have sufficient access to the relevant expertise when appropriate. I can assure you that we and other Member States will continue to ensure that this remains the case.

9 January 2007

EUROPEAN UNION SPECIAL REPRESENTATIVE IN BOSNIA AND HERZEGOVINA

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

Sub-Committee C considered the document on the Council Joint Action amending the mandate of the European Union Special Representative in Bosnia and Herzegovina at its meeting on 18 January and cleared it from scrutiny.

The Sub-Committee expressed regret, however, that financial projections were not yet available and will wish to look at the update on financial implications promised in the Government’s Explanatory Memorandum.

We would also ask that consideration be given to the EU Special Representative being appointed representing both the Council and the Commission when he ceases to be the UN High Representative.

25 January 2007
EU’S PARTNERSHIP AND CO-OPERATION AGREEMENTS: TAKING ACCOUNT OF EU ENLARGEMENT

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

I am writing to inform you of a process underway to sign, provisionally apply and conclude Protocols adapting the EU’s Partnership and Co-operation Agreements (PCA) with Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Ukraine and Uzbekistan to take account of EU enlargement to Romania and Bulgaria.

The Protocols must provisionally enter into force by the time EU enlargement takes place on 1 January.

The Commission has sent the Protocols to the partner countries above. Once it has received confirmation from all countries that they can agree to the draft Protocols, it will draw up a Decision to put to Council sometime in December. The Parliamentary recess means that the European Union Committee may not have sufficient time to clear the texts once they do become available. If this is the case, I hope you will understand if I decide to agree to the proposal before scrutiny has been completed, given the importance of each new Member State becoming a party to the Protocols by 1 January. The extension of the existing PCAs should be a straightforward technical matter, which will not change the substance of the PCAs.

I will write again to inform you once the protocols have been agreed.

30 November 2006

Letter from Rt Hon Geoff Hoon MP to the Chairman

I wrote to you on 30 November to set out the next steps on extending the EU’s Partnership and Co-operation Agreements (PCAs) with third countries to include Romania and Bulgaria (I enclose a copy of that letter). The process for extending PCAs is usually straightforward, with the EU and third countries agreeing a technical protocol extending the PCAs.

Since I wrote, Russia has asked that the protocol extending the EU-Russia PCA be accompanied by a Joint Statement highlighting issues previously covered by the respective bilateral relationships but which Russia feels are now absorbed into an EU framework. The issues Russia wishes to highlight relate mainly to trade, and to application of the EURATOM Treaty to nuclear fuel services.

Russia’s wish to have a text may prolong the time it takes for the EU-Russia PCA protocol to be formally extended. There is some potential for difference between the EU and Russia over whether we have a text at all; how any text should be described; and the language any text might contain. The UK’s position is to support the rights of Romania and Bulgaria throughout any discussions. The German Presidency has agreed to allow the Commission to discuss language for a possible text for now, but without prejudice to the EU’s right to decide whether or not it wants to have a text at all. I shall keep you informed of developments.

2 February 2007

Letter from Rt Hon Geoff Hoon MP to the Chairman

I wrote to you about this on 2 February 2007. My letter explained that the Russian government was seeking to agree a text with the EU to mark the extension of the EU-Russia Partnership and Cooperation Agreement (PCA) to Romania and Bulgaria. I promised to keep you informed of developments.

In early March Russian and Commission officials agreed a text (enclosed) (not printed). Earlier drafts had included Russian language that some Member States could not accept. Significant interventions by the UK and others ensured that the rights of Member States, particularly the Accession countries themselves, were protected during negotiations. The present draft is now acceptable to all Member States and does not impose any new commitments on the EU. On this basis, Member States unanimously adopted the text at working level on 12 March 2007.

The Presidency proposes to publish this text formally on 23 April at the EU-Russia Foreign Ministers’ Troika. Its publication will coincide with the signing of the protocol extending the EU-Russia PCA to Romania and Bulgaria. I support this proposal on the basis of the current text.

12 April 2007
EX侣TS OF MILITARY TECHNOLOGY AND EQUIPMENT

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

Sub-Committee C considered the above document at its meeting on 7 December 2006. On the substance, the transformation of the EU Code of Conduct into a legally binding Common Position is welcome as an excellent initiative which will significantly strengthen the EU’s standards on export controls and non-proliferation. Also welcome is the leadership HMG has shown within the EU on this issue. I return to substantive issues later.

First, however, there is a serious question of procedure on which the Sub-Committee would be grateful for clarification. The Sub-Committee regretted only receiving this document shortly before it is to be considered in Council, yet it is dated 30 June 2005. Given the long time this instrument has been on the table, the Sub-Committee ought to have received it at a much earlier date. Can you explain the reason for the delay?

You will be aware that the Committee has recently recommended that “the Government should provide early warning of important new initiatives and proposed actions” (19th Report, Session 2005–06, p. 6). I am sure that you will agree that the Committee cannot fulfil its scrutiny function without timely communication of documents.

Returning to matters of substance, the Common Position deals comprehensively with a wide range of issues related to export controls and licensing, with a strong emphasis on respect for human rights, international humanitarian law, and the upholding of international and regional peace and security.

However, there is room for a further strengthening of the proposal. First, Criterion two could be strengthened by the insertion of a reference to the rule of law and the fight against corruption to complement those on internal repression and human rights. Regional human rights bodies could be mentioned under the “competent authorities” heading (point (b)), as regional human rights bodies may, depending on the case in question, be well placed to establish that serious violations of human rights have taken place.

Under Criterion four, point (b), the addition of the words “or other disputed territory/ies” after the words “neighbouring country” might be more explicit in covering disputes where both or several countries actually claim the territory in question, such as Taiwan or the Spratly islands in the South China Sea.

We would welcome the strengthening of Criterion seven through a reference to the risk of diversion in transit, taking into account the intangible nature of certain technology or software.

Article 6 appears to be somewhat ambiguous, in that it appears to indicate that dual-use goods will be exempt from the criteria in article 2 if there are no grounds for believing that the “end-user of such goods and technology will be the armed forces or internal security forces or similar entities in the recipient country”. Does this wording imply that a non-state actor, such as a terrorist organisation, could legally gain access to dual-use goods? If so, the document should be amended accordingly.

The Sub-Committee has decided to clear the document from scrutiny, and trusts that you will take these comments into account during the negotiations on this Common Position in Council. I would be grateful if you could keep the Committee informed of the progress in negotiations.

12 December 2006

Letter from Rt Hon Geoff Hoon MP to the Chairman

Thank you for your letter of 12 December confirming that the Committee had cleared the above document from scrutiny. I am replying now to answer the additional points raised in your letter.

Firstly, you asked why it had taken so long for the document to be brought forward for scrutiny, given that it was dated June 2005. I agree that it would have been far better for the document to have been presented much earlier. However, the Common Position required consensus amongst Member States for its adoption, and prior to November 2006 consensus had still not been reached. The Finnish Presidency decided to try one more time to reach agreement, and placed the Common Position onto the December Council agenda. They did this at short notice, and in so doing gave us very little time to present the document to you for scrutiny. I regret that we were not able to give your Committee longer, but I am grateful for the swift response you were able to give us.

In the event, Member States were still unable to reach consensus at the Council meeting of 12 December, and the document failed to be adopted. However, I can confirm that the Government is keen to see adoption as soon as possible, and will continue to work with partners to try to overcome their objections. Sadly, I cannot guarantee that agreement will come quickly.
Moving on to matters of substance, I welcome the Committee’s comments and suggestions on the Common Position. As the document was not adopted in December we are still in a position to take your comments and recommendations back to partners to see whether they would be prepared to incorporate these suggestions. We will of course report back to the Committee on the outcome of these discussions, and if necessary, re-submit the document for further scrutiny.

8 January 2007

Letter from the Chairman to Rt Hon Geoff Hoon MP

Thank you for your letter of 8 January which was considered at the meeting of Sub-Committee C on 18 January. We are pleased that, in this instance, a delay in the adoption of the document means that the Sub-Committee’s comments will be taken into account and look forward to seeing the revised document.

However, we were concerned about the implications of some of your comments for the process of scrutiny. The Committee understands that in this case the document was put to Council by the Presidency unexpectedly but the letter conveys the impression that the Government’s practice is to submit documents such as this only when consensus is reached in the EU working group. At this point, it is often too late for the Committee to make any useful comment.

The problems involved with this kind of document and procedure were fully explored in the Committee’s 2006 Report “Review of Scrutiny: Common Foreign and Security Policy”. It is recognised that there may be political sensitivities and that it may be difficult to judge when to inform the Committee during an ongoing negotiating process, particularly one such as this which has been underway since 2005, but it would be appreciated if in future you would keep us informed of any proposal at the outset, and let us have sight of the document as soon as the first working text is produced, keeping us informed as the process develops so that our comments can be taken into account as a matter of course. As the Government’s response to the Committee’s Report stated: “As we have repeatedly stressed, scrutiny by the Committee is most effective and influential, the earlier it takes place. Reliance on definitive texts, which by their nature are only produced late in the decision making process, reduces the practical influence of the Committee and the impact of its work.” I look forward to hearing your reaction to the above comments.

31 January 2007

Letter from Rt Hon Geoff Hoon MP to the Chairman

Thank you for your letter of 31 January, I can confirm that since the December General Affairs and External Relations Council there has been no progress on the Common Position, and we do not anticipate any in the next few months. This is because there remains a lack of consensus amongst the Member States in favour of the proposal. And it is this lack of consensus on the agreement of the Common Position at this time, not the substance of the text, that I was referring to in my letter of 8 January.

As the Committee identifies, the Government has previously stressed that the fully recognise the importance of effective and early scrutiny. However, in this instance, because there was no prospect of the Common Position being brought to a Council for agreement when it was drafted in the summer 2005, and because it remained a draft subject to amendment, we did not consider that submitting the Council Position for Scrutiny was justified. This is why we were surprised by the decision of the Finnish Presidency to place the item on the General Affairs and External Relations Council at short notice. And why we regret that this meant that there was only limited time for scrutiny to take place.

However, as I have said in earlier correspondence, I welcome the Committee’s comments on the proposed Common Position and will keep you updated on its progress.

19 January 2007

FACILITY FOR EUROPE-MEDITERRANEAN INVESTMENT AND PARTNERSHIP (FEMIP) (13558/06)

Letter from the Chairman to Gareth Thomas MP, Parliamentary Under-Secretary of State, Department for International Development

Thank you for the Explanatory Memorandum on the above Communication which Sub-Committee C considered on 23 November and has decided to hold under scrutiny.
The Sub-Committee agreed that Option 2 of the three in the Commission’s Communication appeared to be the most practical course for the future but expressed concern about the number of uncertainties noted by the Government surrounding this option, in particular the financial implications. The Sub-Committee would like more information on the costings, on the reasons why there has not been a greater take-up, particularly by SMEs, of the finance which is already available; and on the relative roles of the EIB and the Community in risk-taking—is the EU giving loan guarantees to the EIB? The Sub-Committee would also like to see an analysis of how Option 2 will be followed up.

The Sub-Committee also commented that the Government’s consultation process should have been wider to include the Foreign and Commonwealth Office and UKTI who have offices on the ground in the countries concerned.

27 November 2006

Letter from Gareth Thomas MP to the Chairman

Your Committee met on 23 November 2006 and discussed the Commission Communication entitled Assessment of the Facility for Euro-Mediterranean Investment and Partnership (FEMIP) and Future Options. Your Committee did not clear the document from scrutiny and asked for further information in your letter of 27 November.

Conclusions on the FEMIP and Future Options assessment were agreed at the Economic and Financial Affairs (ECOFIN) Council meeting on 28 November, which I attach. Due to time constraints, we were unable to provide you with the information you requested prior to this Council.

In response to your queries, I would like to share the following information with you:

1. Financial implications of Option 2

The ECOFIN Council Conclusions include an agreement to establish an Advisory Committee. This Committee will be the appropriate forum to discuss FEMIP’s business plan, sector strategies and the development of financing instruments, including their cost implications.

It was agreed that FEMIP should be enhanced further through the development of instruments which will target the private sector, particularly small and medium enterprises (SMEs). Enhancements will include:

— An improvement of the allocation of risks between FEMIP, local financial intermediaries and local companies to encourage increased risk-taking by local intermediaries;
— incentives provided together with technical assistance to local intermediaries in order to make global loans (loans to financial intermediaries for on lending to their clients) more effective and accessible to SMEs;
— provision of guarantees and loans in local currency, to minimise risks borne by SMEs; and
— increased use of risk capital and technical assistance to enhance the quality of local SME projects.

The Council Conclusions are consistent with the UK’s position to avoid developing FEMIP into a subsidiary (which would have substantial cost implications), but instead to develop better ways of reaching SMEs. The Council agreed on a subset of Option 2 that excludes new instruments in relation to trade financing, loan guarantee schemes for SMEs, or microfinance, that were proposed in the Staff Working Paper attached to the Communication on the FEMIP Review. This reflects a concern to focus on affordable options which are already within FEMIP’s existing portfolio of instruments, whilst seeking to increase their effectiveness. The Conclusions serve to limit the increase in costs related to Option 2. In addition, several of the recommendations do not involve additional resources per se, rather improved ways of working, such as a better combination of EIB loans and EU budgetary resources, and increased risk taking by local intermediaries.

The full Cost implications of the Council Conclusions will be determined through the forum of the Advisory Committee. In the meantime, there has been some analysis of the possible additional resources that are likely to be required. For example, the Communication proposes an additional 20 staff by the end of 2013 to cope with strengthening of “staff-intensive risk capital operations”, the broadening of the role of local offices and the creation of an Advisory Committee. FEMIP currently has a very low staff to lending volume ratio relative to other international financial institutions, so hiring additional staff would seem reasonable in this context.
The Communication also gives an indication that an appropriate level of risk capital financing under Option 2 would be €80 million (£53 million) a year, €30 million (£20 million) more than that envisaged under Option 1, and that this gap could either be filled by Member States, Mediterranean countries or the EIB itself. The UK will continue to work to ensure that an appropriate balance is struck between keeping costs down and ensuring that FEMIP achieves its private sector mandate, particularly in relation to reaching SMEs.

2. Why has there not been greater take-up, particularly by SMEs, of the finance which is already available?

The take up of FEMIP finance available to the private sector, particularly SMEs, has varied from country to country. Volumes in part depend on the investment climate in the country and the liquidity of the financial system. Where the investment climate is positive and there is a shortage of liquidity, there will be a high demand for FEMIP’s loan and risk capital offerings.

Another reason for FEMIP not fulfilling its private sector mandate is that its instruments do not always match the risk profile of private sector projects. The Special FEMIP Envelope, set up in mid 2005, focuses on providing loans for private sector operations with a higher risk profile. The Special FEMIP Envelope is popular, and its budget is fully used.

Other reasons are the strict security/guarantee requirements as well as the provision of loans in foreign currency, which place exchange rate risk fully on the borrowers. Whilst FEMIP can do, and is doing, more to make local currency loans available, FEMIP needs to issue local currency bonds in order to manage its own exchange risks. This is time-consuming and costly: regulatory authorities in beneficiary countries need to clear all steps to issue local currency bonds in local markets or develop other hedging instruments. Specific Framework Agreements and other legal documentation (for example on taxation) need to be negotiated with local authorities before any EIB bond issuing is possible.

3. What are the relative roles of the EIB and the Community in risk-taking — is the EU giving loan guarantees to the EIB?

The European Commission and the EIB are currently discussing the Guarantee Agreement relating to the Community Guarantee to be provided to the Bank against losses under loans and guarantees for projects financed outside the EU for the period 2007–13 (ie within the framework of the external mandates approved recently by the ECOFIN Council).

Loans granted by the Bank under these mandates are covered by the EU’s Guarantee Fund in respect of political, and in certain cases, commercial risks. The logic behind this guarantee is that the EIB operates outside the EU, at the request of Member States. In order to secure its credit rating and cost of funding, adequate guarantees are provided to the Bank when operating in areas which are, by definition, riskier than Europe. This activity has never cost anything to the Community’s budget as the EIB has always managed to get the money back from its customers.

At the request of Member States, the EIB is progressively moving towards more risk sharing. The Euro-Mediterranean Facility established by EIB in 2001 with €1 bn (£0.67 bn), for example, asks for an appropriate guarantee (from a recipient country government, acceptable corporate entity and/or a pool of banks), as it does not benefit from the Community Guarantee. More recently, with the Special FEMIP Envelope (SFE) set up in August 2005, the EIB provides loans for private sector operations in the Mediterranean with a higher risk profile than under “standard” EIB operations, or for which acceptable third party guarantees are not available (or too expensive, or insufficient). To cover the additional risk, SFE loans are priced according to the risk, and a special reserve of €100 mln (£67.42 mln) has been established (to cover loans up to around €500 mln (£336.9 mln).

It is premature to anticipate the details of the new Guarantee Agreement but it is likely to be structured along the following lines: a “Comprehensive Guarantee” for operations entered into with a State, or guaranteed by a State, and other operations entered into with regional or local authorities or government-owned and/or—controlled public enterprises or institutions; and a “Political Risk Guarantee”, ie coverage restricted to defaults resulting from non-transfer of currency, expropriation, war or civil disturbance, and denial of justice upon breach of contract in any other cases (which means, principally, private sector projects).
4. **How will Option 2 be followed up?**

As set out above, the ECOFIN Council Conclusions include the decision to establish a FEMIP Advisory Committee. The EIB will contact the 35 Finance Ministries and invite them to designate their representative in order to call a first meeting in February. This Committee will become the appropriate forum to discuss FEMIP’s business plan, sector strategies and the development of financing instruments. We will continue to work closely with the EIB and the Commission, including through the Advisory Committee, to ensure that FEMIP's operations are coordinated with those of other international financial institutions, those of the Commission, and are focused on developing affordable instruments in support of private sector development, particularly to reach SMEs.

We will be mindful of the need to consult with other Government departments who have offices in the areas where FEMIP operates.

7 December 2006

**FIJI: CONSULTATIONS UNDER ARTICLE 96 OF THE COTONOU AGREEMENT**

**Letter from the Chairman to Rt Hon Geoff Hoon MP, Minister for Europe,**

**Foreign and Commonwealth Office**

Sub-Committee C cleared this Communication from scrutiny on 8 February.

The Sub-Committee expressed its deep concern about events in Fiji and hopes that the Government will take a lead in urging the EU to use its influence to bring the country back to democracy.

We noted that the timetable seems to be relaxed both for the drafting of the proposed letter to Fiji’s current administration and for the proposals leading up to the adoption of measures against Fiji. The Sub-Committee would urge the Government to inject a greater degree of urgency into the timetable for action, and suggest the inclusion in the proposed letter of a date by which a substantive reply should be received from the current administration in Fiji.

19 February 2007

**Letter from Rt Hon Geoff Hoon MP, to the Chairman**

Thank you for your letter of 19 February about recent events in Fiji and the opening of Article 96 consultations.

I note your concerns about the time taken to prepare the letter from the Commission invoking the opening of consultations. I am pleased to report that the letter has now been sent to the President of Fiji. The consultations must begin no later than 30 days after the European Commission’s invitation and will continue over a mutually agreed timeframe of no longer than 120 days.

An initial response has been received to the letter and the first consultations are expected to take place later this month. The consultations involve the European Commission, Germany as current Presidency of the European Union, and Portugal as the forthcoming Presidency.

May I reassure you that the UK will continue to play a leading role in helping to return Fiji to the democratic process governed by the rule of law.

12 March 2007

**FINANCIAL ASPECTS OF EU DECISIONS AND COMMUNICATIONS**

**Letter from the Chairman to Gareth Thomas MP, Parliamentary Under-Secretary of State,**

**Department for International Development**

You will have noticed in my recent scrutiny letters a number of requests from Sub-Committee C for more information on the financial aspects of EU Decisions and Communications.

In general the information provided in Explanatory Memoranda (EM) covers the ground well, but where there are financial and/or budgetary implications we would like information on how these are to be addressed. A recent EM, for example, stated that “The financial implications of Option 2 are not yet clear, as it comprises proposals for a range of innovative new instruments, strengthening of local offices, and increased levels of equity investment”. (13558/06).
The Sub-Committee realises that it will not always be possible to give precise details of all proposed expenditure, but would like to see an outline of the budget, how funding is to be found (including which budget line will be tapped when funding is to be found “within existing budgets”) and where possible how the proposed plans for activity and expenditure are to be implemented.

6 December 2006

FINANCING INSTRUMENT FOR DEVELOPMENT COOPERATION (DCI)

Letter from the Chairman to Rt Hon Hilary Benn MP, Secretary of State for International Development, Department for International Development

Thank you for your explanatory memorandum dated 6 October 2006 which Sub-Committee C considered at its meeting on 12 October. The Sub-Committee recommended that the document be cleared from scrutiny and the document was cleared by myself this afternoon.

The final text of this regulation was only received by your department at a late stage, therefore we recognise that little time was available for scrutiny. However, we stress that we are often prepared to scrutinise draft texts, if necessary with further updates should the text of documents change significantly during the course of negotiations.

We would also like to empathise the need for careful preparation of explanatory memoranda, noting that paragraph seven of your explanatory memorandum refers to figures in millions of euros when they should be given in billions.

12 October 2006

FOREIGN MINISTERS’ INFORMAL (GYMNICH) MEETING, MARCH 2007

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

The EU Foreign Ministers’ Informal Meeting (Gymnich) took place in Bremen on 30–31 March 2007. My Right Honourable Friend the Foreign Secretary represented the UK.

The agenda items were as follows:

WESTERN BALKANS

Foreign Ministers discussed UN Status Envoy Martti Ahtisaari’s proposals to the UN Security Council on the future status of Kosovo and agreed on the need to work towards a UN Security Council Resolution which would pave the way for implementing the status settlement.

There was reaffirmed support for Ahtisaari’s proposals along the lines set out in Conclusions from the February General Affairs and External Relations Council, which express full support for Ahtisaari and his efforts in conducting the political process to determine Kosovo’s future status and the EU’s readiness to play a role in the implementation of the status settlement.

EUROPEAN NEIGHBOURHOOD POLICY

Foreign Ministers had a broad ranging discussion of the European Neighbourhood Policy. There was support for work underway by the Presidency and Commission to strengthen the policy.

BELARUS

High Representative for the Common Foreign and Security Policy Javier Solana briefed Foreign Ministers on recent discussions between Helga Schmid, Head of the Secretariat’s Policy Unit, and the Belarusian authorities.

CENTRAL ASIA

The Presidency briefed the meeting on the Ministerial Troika with the five Central Asian Foreign Ministers in Astana on 28 March.
MIDDLE EAST PEACE PROCESS
High Representative for the Common Foreign and Security Policy Javier Solana briefed partners on the recent Arab League meeting.
Foreign Ministers discussed the EU’s reaction to the Palestinian National Unity Government and ways the EU can support negotiations between the parties.
Foreign Ministers also exchanged views on capacity building and the Commission’s proposals for a new International Mechanism for Support to the Palestinians.

IRAN
My Right Honourable Friend the Foreign Secretary briefed partners on developments since the seizure of 15 service personnel on HMS Cornwall. Foreign Ministers agreed a statement of support for the UK deploring Iran’s detention of the personnel, calling for their immediate return and undertaking to decide on further measures if the 15 are not released.
Foreign Ministers also exchanged views on Iran’s nuclear programme following the adoption of UN Security Council Resolution 1747 on 24 March.

SUDAN
Foreign Ministers discussed the deteriorating humanitarian and security situation in Sudan and will return to the issue at the next General Affairs External Relations Council in April.

ZIMBABWE
My Right Honourable Friend the Foreign Secretary underlined the gravity of the situation in Zimbabwe and called for resolute EU action against those responsible for the government’s excessive use of force against the opposition.

DRC
Foreign Ministers discussed recent events in Kinshasa.

SOMALIA
Foreign Ministers discussed the renewed violence in Mogadishu and an upcoming visit by the EU Troika to discuss preparations for a reconciliation conference with the Transitional Federal Government.

BALLISTIC MISSILE DEFENCE
Ballistic Missile Defence was raised briefly. Foreign Ministers looked forward to discussion in NATO.

7 April 2007

GENERAL AFFAIRS AND EXTERNAL RELATIONS COUNCIL, NOVEMBER 2006

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

The General Affairs and External Relations Council (GAERC) will take place on 13–14 November in Brussels. My Right Honourable Friend the Secretary of State for Foreign and Commonwealth Affairs (Mrs. Margaret Beckett) and I will represent the UK. My Right Honourable Friend the Secretary of State for Defence (Mr. Des Browne) will represent the UK at the Defence Ministers’ discussions. The agenda items are as follows:

GENERAL AFFAIRS

Preparation of the European Council on 14/15 December 2006

Ministers will discuss the draft agenda for the December European Council. This groups together the issues under four broad headings (enlargement; an area of freedom, security and justice; innovation and energy; and external).
Enlargement

The Commission is expected to brief the Council on the enlargement package published on 8 November, including progress reports on Turkey, Croatia and the Western Balkans, as well an enlargement strategy paper.

Commission Legislative Work Programme 2007

The Commission will present its priorities for 2007: prosperity, solidarity, security, a strong voice in the world and delivery and better regulation. The paper has a strong focus on the Lisbon agenda, promising a dynamic internal market together with interlocking measures to foster knowledge, innovation and a sustainable environment for growth.

EXTERNAL RELATIONS

Western Balkans

UN Status Envoy, Martti Ahtisaari, will brief the Council on latest developments in Kosovo. Ministers will also discuss Serbia.

Relations with Russia

The Council will discuss the negotiating mandate for the successor to the EU-Russia Partnership and Cooperation Agreement and the EU-Russia Summit, to be held on 24 November.

Middle East Peace Process

We expect ministers to discuss the deteriorating security situation, particularly in Gaza. The Council is likely to focus on concrete actions the EU can take to build confidence and momentum, such as work on Palestinian institutional capacity.

Iran

We expect the Council to receive an update on discussions in New York.

Democratic Republic of Congo

The Council is expected to discuss the situation in the Democratic Republic of Congo following 29 October Presidential elections.

In joint session, Defence and Foreign Ministers will discuss future EU engagement with the Democratic Republic of Congo.

DEFENCE MINISTERS’ DISCUSSIONS

Military Capabilities/Operations

As part of the military Headline Goal 2010, work on producing the Force Catalogue is complete. The Catalogue is a list of military capabilities that Member States have declared available for an ESDP operation.

On operations, the Council will discuss EUFOR’s mission in DRC. The UN mandate will expire on 30 November and given the situation may be volatile following the elections, a short extension may be required.

The Council will also discuss EUFOR transition following the recent elections in Bosnia, and Darfur where the UK supports the extended AMIS mission, whilst continuing to bring pressure to bear on the Sudanese government to accept a UN operation.
Civil-military Coordination

The Presidency have completed work on a paper for improving information sharing in support of EU crisis management operations. In December High Representative Solana is due to present a progress report and proposals for moving forward post-Hampton Court work on crisis management structures and Secretariat reform.

European Defence Agency

We expect the Council to discuss the operational budget and the financial framework for 07–09.

Civilian Capabilities Improvement Conference

The Civilian Capabilities Conference will take place in the margins of the Council to discuss the development of civilian ESDP capabilities.

9 November 2006

GENERAL AFFAIRS AND EXTERNAL RELATIONS COUNCIL, FEBRUARY 2007

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

The General Affairs and External Relations Council (GAERC) took place on 12 February in Brussels. My Right Honourable Friend the Secretary of State for Foreign and Commonwealth Affairs (Mrs. Margaret Beckett) and Sir John Grant (UK Permanent Representative to the EU) represented the UK.

The agenda items were as follows:

GENERAL AFFAIRS

Preparation of the European Council on 8/9 March

The Council took note of the annotated draft agenda prepared by the Presidency for the European Council in Brussels on 8 and 9 March.

The European Council will focus on the Lisbon strategy for jobs and growth; the EU’s Better Regulation initiative and an integrated energy and climate policy.

The Presidency will use the annotated draft agenda as the basis for the draft European Council Conclusions.

EXTERNAL RELATIONS

World Trade Organisation

The Council exchanged views on the basis of a presentation by Commissioner Peter Mandelson on prospects for the Doha Development Agenda negotiations.

The Council also adopted Conclusions underlining the importance of a successful conclusion to the revision of the Government Procurement Agreement.

Western Balkans

The Council discussed Serbia in light of recent elections and Kosovo on the basis of a presentation by UN Special Envoy Martti Ahtisaari, of his draft status settlement proposals.

The Council adopted Conclusions on Serbia recalling its Conclusions of 3 October 2005 and welcoming the Commission’s readiness to resume negotiations on a Stabilisation and Association Agreement with a new government in Belgrade provided it shows clear commitment and takes concrete action for full cooperation with the International Criminal Tribunal for the Former Yugoslavia.

The Council adopted Conclusions on Kosovo: expressing full support for the UN Special Envoy Martti Ahtisaari and his efforts in conducting the political process to determine Kosovo’s future status; underlining that the proposals create the basis for Kosovo’s sustainable economic and political development and for
strengthening the stability of the entire region; urging Belgrade and Pristina to participate actively and constructively in the political process and expressing the EU’s readiness to play a role in the implementation of the status settlement.

Sudan

The Council adopted Conclusions expressing concern at the deteriorating security and humanitarian situation in Darfur, reiterating its demand that all parties refrain from any form of violence and denouncing in particular the bombing of areas in Northern Darfur by the Sudanese Air Force.

The Conclusions also welcome the agreement between the African Union (AU) and UN on the support package for the African Union Mission in Sudan and call on the Sudanese Government to cooperate with the deployment of the hybrid AU/UN force.

Somalia

The Council adopted Conclusions welcoming the Transitional Federal Government’s commitment to launch an inter-Somali dialogue and reaffirming the EU’s willingness to assist the African Union Mission in Somalia and reconstruction efforts in Somalia.

Afghanistan

The Presidency briefed the Council on the EU-Afghanistan Troika meeting on 29 January and the Joint Coordination and Monitoring Board meetings on 30 and 31 January 2007.

The Council adopted Conclusions approving the Crisis Management Concept for a mission to Afghanistan under the European Defence and Security Policy, in the field of policing with links to the wider rule of law.

Iran

The Presidency and the High Representative for the Common and Foreign and Security Policy, Javier Solana, briefed the Council on their contacts with Iran’s national security adviser, Ali Larijani, in Munich on 11 February.

The Council agreed a draft common position on restrictive measures against Iran. The draft common position will ensure the effective implementation in the EU of UN Security Council Resolution 1737 by imposing inter alia a ban on the supply of certain goods and technology related to Iran’s nuclear and missile programme; a visa ban against persons and a freeze of assets against persons and entities listed in UNSCR 1737 and other persons or entities associated with these programmes; and a requirement to prevent specialised teaching or training of Iranian national in disciplines related to these fields.

Middle East Peace Process

The Council exchanged views on the Mecca agreement of 8 February to form a National Unity Government. The Foreign Secretary briefed the Council on her recent visit to the region and her telephone calls with President Abbas and Saudi Arabia’s Prince Saud.

The Council adopted Conclusions welcoming the agreement to form a National Unity Government, reiterating the EU’s willingness to work with a government that adopts a platform reflecting the Quartet principles, and welcoming the reinvigorated Quartet and their statements of 2 and 9 February.

The Council also adopted Conclusions on Lebanon welcoming the success of the Paris III conference on 25 January 2007, urging parties to refrain from violence and calling for full implementation of UN Security Council Resolution 1701.

Libya

Following the adoption of Conclusions on 22 January, the Council discussed EU handling of the case of the five Bulgarian nurses and a Palestinian doctor sentenced to death in Libya for allegedly infecting children with HIV/AIDS in a Libyan hospital.

19 February 2007
GENERAL AFFAIRS AND EXTERNAL RELATIONS COUNCIL, APRIL 2007

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

Further to my letter of 15 March 2007\(^{11}\) which informed you about the Joint Action to establish a European Security and Defence Policy mission in Afghanistan, I am writing to inform you about a number of other EU documents which are also expected to be considered at the 23 April General Affairs and External Relations Council.

— Common Position renewing restrictive measures on Burma.
— Joint Action involving the African Centre for Study and Research on Terrorism.
— Joint Action extending mandate of EU Planning Team in Kosovo.
— Joint Action appointing a new EU Special Representative in Sudan.
— Joint Action extending mandate of EU Border Assistance Mission in Rafah.

It is unlikely that drafts of the above documents will be available before Thursday 22 March, your deadline for documents to deposited in Parliament in order for you to consider them before the Parliamentary recess. As there will be very limited time for you to consider the documents after the recess, I am writing to you now to give you as much information as possible. I will ensure Explanatory Memoranda are sent to you as soon as I have received drafts of the documents, which I anticipate to be during the recess. I trust that this will allow you to consider the Explanatory Memoranda at your meeting on 19 April.

**Common Position renewing restrictive measures on Burma**

Starting with Common Position 96/635/CFSP, the EU has adapted and strengthened its sanctions regime against Burma over the last eleven years in response to deteriorating circumstances on the ground and the failure by the government of Burma to make progress on human rights, national reconciliation and use of forced labour. In line with EU sanctions policy, the EU has worked to achieve positive change in Burma by placing pressure on those responsible for its policies, whilst minimising any adverse impact on the general population.

Before the existing Common Position expires, the Council is expected to adopt a new Common Position to extend the measures of CP 2006/318/CFSP for a further year, to 30 April 2008. We expect that the new Common Position will not include any additional measures and will only make amendments to the list of those targeted by the assets freeze and travel ban.

It is important that the EU maintains pressure on the military regime to enter into a meaningful and genuine dialogue with the democratic opposition, with the view to seeing an eventual transition to civilian rule; and to fully respect human rights including the release of political prisoners and recognition of the rights of ethnic communities. The renewal of these measures will show that the European Union remains committed to keeping up such pressure. The Government supports this approach.

**Joint Action involving the African Centre for Study and Research on Terrorism**

The African Centre for Study and Research on Terrorism (CAERT) was recently established in Algiers. Its remit is to study terrorism and in particular to focus on African issues and stopping the spread of terrorism.

To assist the Centre, the French have put forward a proposal for an EU Joint Action, funded by the Common Foreign and Security Policy budget. This project is in two parts and comprises:

(i) a seminar attended by 150 participants from African Union Countries, specialists from Member States, the Commission and the Centre. The output of the seminar will be an action plan which will form the second stage of the project; and

(ii) the second phase will involve an audit of Counter Terrorism capacity within African Union States, and the formation of ideas for capacity building projects, some of which can be undertaken with the assistance of the EU.

The UK has supported the Joint Action proposal and believes the concept of a raft of capacity building projects, which can be undertaken by the EU with the goodwill of beneficiary countries, is appealing.

\(^{11}\) Refer to “ESDP Afghanistan Mission”
However, there are a number of unanswered questions in terms of the detail, including confirmed dates for the seminar (originally planned for November 2006), exact budget details and who will pay for the follow-up projects identified during the process. The Commission have expressed concerns about these details as well as some legal issues and have said that they will report back after having looked into this in greater depth.

Due to this lack of clarity at such a late stage, we think it unlikely that this Joint Action will be on the agenda for decision at the General Affairs and External Relations Council in April.

**Joint Action extending mandate of EU Planning Team in Kosovo**

The mandate of the EU Planning Team in Kosovo is due to expire at the end of May and it will be extremely important that the EU Planning Team is able to continue its work during the ongoing Status process. The Planning Team continues to focus on support to the rule of law in Kosovo, which is not only critical for the future of Kosovo, but also important for securing a stable and safe European neighbourhood.

**Joint Action appointing new EU Special Representative for Sudan**

The mandate for the European Union Special Representative for Sudan expires on 30 April 2007. The current EU Special Representative is Pekka Haavisto, a former Finnish Minister, appointed by EU Foreign Ministers in July 2005. He was mandated, as part of the international community and in support of the African Union and the UN to assist the Sudanese parties, the African Union and the UN to achieve a political settlement of the conflict in Darfur, including through the implementation of the Darfur Peace Agreement. In addition he was mandated to facilitate the implementation of the Comprehensive Peace Agreement and the Eastern Sudan Peace Agreement, with due regard to the regional ramifications of these issues and to the principle of African ownership. He was also tasked to ensure maximum effectiveness and visibility of the European Union’s contribution to the African Union mission in the Darfur region of Sudan (AMIS).

Earlier this year EU Member States were invited to nominate candidates to replace Haavisto. We expect Javier Solana, EU High Representative for the Common Foreign and Security Policy, to propose a successor at the next General Affairs and External Relations Council on 23 April 2007, for Ministers’ endorsement. We expect the Council Secretariat to issue a draft Council Joint Action on the details of the mandate of the future EU Special Representative shortly.

**Joint Action extension of mandate of EU Border Assistance Mission at Rafah**

The EU Border Assistance Mission at Rafah is an important example of EU engagement in the region. The mission continues to provide a vital confidence building role that allows the Palestinian Authority to operate the border. The mission’s current mandate expires at the end of May and I am keen to support an extension of the mission’s mandate provided the Israeli and Palestinian support for the mission continues.

20 March 2007

**Letter from Rt Hon Geoff Hoon MP to the Chairman**

My letters of 15 and 20 March informed you about various EU documents that we thought were likely to be considered at the 23 April General Affairs and External Relations Council. This letter updates the Committee on progress during the Easter recess.

The Joint Action to establish a European Security and Defence Policy mission in Afghanistan will now be considered at the 12 May General Affairs and External Relations Council. The 23 April meeting is likely to note the further progress in planning. I expect to receive a draft of the Joint Action this week and will forward it to you shortly with an Explanatory Memorandum.

Three other documents listed in my two earlier letters are still some way from adoption and will therefore not be on the agenda for 23 April either. It is probable that these documents will also be considered at the next General Affairs and External Relations Council on 12 May:

— Joint Action involving the African Centre for Study and Research on Terrorism
— Joint Action extending mandate of EU Planning Team in Kosovo
— Joint Action extending mandate of EU Border Assistance Mission in Rafah.
On a separate issue, I would like to update the Committee regarding the EU Special Representatives for Afghanistan and Sudan. When Explanatory Memoranda covering the Joint Actions to renew the mandates of EU Special Representatives for Afghanistan and Sudan were submitted to Parliament (on 24 January and 27 March respectively), certain details were not known. I am now able to provide you with this information.

EU SPECIAL REPRESENTATIVE FOR AFGHANISTAN
The mandate was renewed for 12 months (ending on February 29 2008) with a budget of €2.45 million.

EU SPECIAL REPRESENTATIVE FOR SUDAN
On 29 March the Political and Security Committee agreed to recommend Ambassador Torben Brylie from Denmark as the next EU Special Representative for Sudan. A Joint Action has been agreed for a budget of €1.7 million for this post. The mandate will be for 10 months and will end on 29 February 2008.

HUMANITARIAN AID (ECHO) OPERATIONAL STRATEGY 2007

Letter from the Chairman to Gareth Thomas MP, Parliamentary Under-Secretary of State, Department for International Development
Sub-Committee C considered the above Commission document at its meeting on 25 January 2007. Members welcomed the document and found it informative and useful. We would however like to draw your attention to the absence in the document of any reference to external refugees displaced from Iraq. Has the risk for them been assessed by ECHO?

31 January 2007

Letter from Gareth Thomas MP to the Chairman
Your Committee met on 25 January 2007 and discussed the Commission Staff Working Document: Directorate-General for Humanitarian Aid (ECHO) Operational Strategy 2007. Your Committee cleared the document from scrutiny and asked for further information on whether DG ECHO had assessed the risk of increased external displacement from Iraq.

I agree with you that displacement, both internal and external is a matter of concern with regard to Iraq. We consider that the European Commission is well placed to respond to these needs and have encouraged ECHO to re-engage. At the most recent Management Committee on humanitarian aid in January, ECHO confirmed that officials were keeping a close watch on the situation in Iraq and neighbouring countries. DFID’s Director General, Policy and International, Mark Lowcock discussed this with the Commission’s Director General for Humanitarian Aid, Antonio Cavaco, on 31 January; they agreed to remain in contact on Iraq. A decision on whether ECHO should re-engage now rests with Commissioner Michel.

15 February 2007

INFORMAL SUMMIT OF EUROPEAN HEADS OF STATE AND GOVERNMENT, LAHTI, OCTOBER 2006

Letter from Rt Hon Margaret Beckett, Foreign Secretary, Foreign and Commonwealth Office, to the Chairman
The informal meeting of European Heads of State or Government in Lahti, Finland will take place on 20 October. The Prime Minister is attending on behalf of the United Kingdom. The format of this informal will follow that of the Hampton Court summit during the UK Presidency.

The Finns intend the discussions to focus on innovation and external energy; President Putin of Russia will join the summit for dinner. The situation in Darfur and migration issues, bearing in mind recent experience in Spain, will also be discussed.

There will be no formal conclusions of the summit. Prime Minister Vanhanen will make a public statement after the meeting setting out what Heads have agreed to take forward within the EU’s wider delivery agenda. I hope you find the attached statement setting out the main agenda items and what the UK expects of the discussion useful. The Government will provide a written statement to the House next week on the outcome of the Lahti summit.

17 October 2006
written ministerial statement: october 2006

finnish presidency of the european union: informal meeting of european heads at lahti,
20 october 2006

the foreign secretary (mrs. margaret beckett): the informal summit of european union heads of state and government will be held on 20 october in lahti, finland. my right honourable friend the prime minister (mr. tony blair) will represent the uk.

the government welcomes the opportunity the lahti summit provides for eu leaders to take forward the “delivery agenda” agreed at the hampton court summit last october, during the united kingdom’s presidency of the eu. this will help the eu respond to the challenges of the 21st century: improving european innovation and research; ensuring europe’s universities can compete globally; tackling the energy challenges all member states face; addressing citizens’ concerns on security and on migration.

in particular lahti will concentrate on eu external energy policy and innovation. there will also be discussion of immigration and of darfur, as well as dinner with president putin.

at lahti we will underline the importance of climate security in the eu’s discussion of energy; for example through the extension of the emissions trading scheme and developing clean coal technology. delivering our climate change goals is bound up with improving our competitiveness and fostering jobs, growth and innovation. lahti will be an opportunity to set a clear political framework for future work.

the discussion of external energy issues will also ensure we maintain the momentum of the hampton court agenda, for example by mainstreaming energy into the eu’s relations with third countries. energy will also feature in the discussions with president putin over dinner. this will also be an opportunity to consider the future of the strategic relationship between russia and the eu.

the other main theme at lahti will be innovation.

the government believes there are two major challenges for the eu in this area. firstly a fragmentation of effort in research, and secondly europe’s relative weakness in getting to market the high quality research and innovation carried out by its research base and universities. lahti should make progress on the key aspects of improving the eu’s innovation performance, such as intellectual property rights and the links between business and education.

heads of government will also discuss the situation in darfur, at the request of my right honourable friend the prime minister. it is important that eu heads send a clear message underlining the urgent need to implement the peace deal agreed in may.

we also expect a discussion of migration issues, bearing in mind recent experience in spain. member states agreed at hampton court to a series of commitments as part of the global approach to migration. it is important that the eu continues to prioritise delivery of those actions.

the government will provide a written statement to the house next week on the outcome of the lahti summit.

joint declaration on a political dialogue between the eu and montenegro

letter from rt hon geoff hoon mp, minister for europe, foreign and commonwealth office
to the chairman

on 24 july, i wrote to advise you of the presidency’s proposal for a joint declaration on a political dialogue between the eu and montenegro and enclosed for your information a draft copy. as promised, i am now sending you the final version, which was adopted by the general affairs and external relations council on 15 september and published in the eu’s official journal on 7 october. you will see that this version is only slightly amended from the draft, and is based closely on the text of the serbia and montenegro declaration.

serbia has inherited the joint declaration on a political dialogue between the eu and serbia and montenegro.

the political dialogue will take place through high-level meetings between montenegro and the eu, in the troika format; bilateral and multilateral exchange of information in foreign policy decisions; and contacts at

12 correspondence with ministers 40th report of session 2006-07, hl paper 187, p203.
a parliamentary level. This dialogue is part of the Stabilisation and Association process and runs in parallel to, but separate from, the Stabilisation and Associations negotiations.

On 21 May 2006, in a referendum assessed as free and fair by the international community, the Republic of Montenegro voted for independence from the State Union of Serbia and Montenegro. Independence was formally declared on 3 June and the UK recognised Montenegro as an independent sovereign state on 13 June. On 5 June, the National Assembly in Belgrade declared the Republic of Serbia to be the continuing international personality of SaM. This was in accordance with the SaM Constitutional Charter and is a position which the UK accepts.

19 October 2006

MIDDLE EAST PEACE PROCESS (MEPP)

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

Thank you for your explanatory memorandum dated 4 October 2006 which Sub-Committee C considered at its meeting on 12 October. The Sub-Committee agreed to clear the document from scrutiny.

We would like to stress the continuing need for EU engagement in the Middle East Peace Process. We would appreciate your analysis of progress made on the Peace Process and of the role that has been played by the EU to date, as well as your views on what else the EU might do to achieve lasting peace in the region.

12 October 2006

Letter from Rt Hon Geoff Hoon MP to the Chairman

Thank you for you letter of 12 October asking for our analysis of the progress made on the Middle East Peace Process (MEPP) to date, of the role that has been played by the EU, and our views on what more the EU might do to achieve lasting peace in the region.

As a member of the Quartet, the EU is at the centre of the international community’s efforts to achieve peace in the Middle East. High Representative Solana, the Commission and the Council are fully engaged. Mr Solana visited the region 25 -30 October, accompanied by the EU Special Representative for the MEPP Marc Otte. His focus will be to encourage the parties back to the Roadmap and to promote dialogue between them. The situation is regularly reviewed by the Council. The MEPP has been discussed at every General Affairs and External Relations Council so far this year.

The EU is also playing an important practical role on the ground. Following ideas put forward by the UK, the European Commission has set up a Temporary International Mechanism (TIM) to deliver support directly to the Palestinian people. The TIM has so far provided allowances for 98,000 of the poorest Palestinians, as well as supplying fuel to Palestinian hospitals, and essential goods and services to schools and hospitals. The European Community has so far provided €107 million through the TIM, in addition to bilateral contributions from Member States. This is out of a total European Community contribution to the Palestinians of €329 million so far in 2006, already more than in any previous year.

Further practical roles include the EU Border Assistance Mission (EUBAM) at Rafah, set up under the UK Presidency, which is working with all parties to ensure that the border crossing between the Gaza strip and Israel is open regularly. The EU also has a mission monitoring and assessing the Palestinian Civil Police (EUPOL COPPS) in preparation for a full training programme when there is a Palestinian government we can work with. Troops from EU countries are also playing lead roles in the UNIFIL force in Lebanon.

The EU’s future engagement should continue on this basis: working to bring all parties back to the Roadmap; and undertaking important roles on the ground which can build confidence and improve the situation for the people of the region. We are currently working with the EU to identify areas where the EU can look to build Palestinian institutional capacity. We hope that this initiative will be endorsed by the GAERC in November.

30 October 2006
MILITARY SUPPORT TO EU DISASTER RESPONSE: IDENTIFICATION AND COORDINATION OF AVAILABLE ASSETS AND CAPABILITIES

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

Please find enclosed for your information a copy of “Military Support to EU Disaster Response: Identification and co-ordination of available assets and capabilities (not printed). The Presidency of the Council intends to pass the paper to the General Affairs and External Relations Council on 13 November where it will be noted.

The document provides a framework aimed at improving the planning and coordination of military assets in support of EU disaster relief activities. The UK has strongly advocated identifying practical improvement to the EU’s crisis response procedures following the Tsunami of 2004. During the UK Presidency of the EU, the Hampton Court Informal Meeting considered how the EU could co-ordinate better its disaster response efforts and tasked the High Representative for Common Foreign and Security Policy, Javier Solana, with taking forward this work. His initial proposals focused on the need to improve arrangements for the co-ordination of relief efforts. This resulted in the report entitled “A General Framework for the use of European Security and Defence Policy Transportation Assets and Co-ordination Tools in Support of EU Disaster Response” which was noted by the European Council on 15 May 2006 and about which I wrote to the Committee on 28 June 2006.

The attached document builds on and is complementary to the General Framework paper. It identifies a number of Member States’ military assets that might usefully support an EU disaster response effort. These include strategic and tactical transport (the subject of the General Framework paper mentioned above), medical units, logistics, chemical, biological, radiological and nuclear (CBRN) capacities, engineering capabilities etc. The use of any such assets would follow international guidelines, notably the Oslo Guidelines on the Use of Military and Civil Defence Assets in Disaster Relief as developed by the UN. One of the key principles is that military assets are to be used only in support of civilian efforts and when civilian resources are overstretched or inadequate.

The paper sets out that: assets are only to be offered on a voluntary basis; the proposed co-ordination mechanisms utilise existing structures; the initiative only addresses EU co-ordination for military assets for outside the EU; and Member States maintain political oversight of the Council Secretariat’s co-ordinating activity. As such it is fully in line with UK objectives to improve the EU’s disaster response capacity. Once noted by the Council, Member States will look to debate the detailed co-ordination modalities which the paper calls for.

9 November 2006

NORTHERN DIMENSION—LATEST DEVELOPMENTS

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

I am writing to let your Committee know of the Finnish Presidency’s plans to take forward their “Northern Dimension” regional co-operation initiative.

The Northern Dimension, launched under the first Finnish Presidency in 1999, is designed to promote dialogue and co-operation, respect for the environment, economic co-operation and integration, and sustainable development in Northern Europe. In practice, particularly after the 2004 enlargement of the EU, the Northern Dimension has focused its activities on Northwest Russia. The latest two-year Action Plan expires 31 December 2006. The new policy framework will make it a permanent shared, policy between the EU, Russia, Iceland and Norway. It will look to develop the work of the Northern Dimension Environmental Partnership and the more recent Northern Dimension Partnership for Public Health and Social Affairs. Projects are funded by donations from individual countries, regional bodies, and international financial institutions, such as the Nordic Investment Bank and the European Investment Bank. There is no dedicated EU funding. However, to date, Northern Dimension projects have bid successfully for funds to a number of European Community funding streams (for example, the European Regional Development Fund) and from 2007 they will be able to bid for European Neighbourhood Partnership Instrument funding.

Examples of successful projects include the Northern Dimension Environmental Partnership-supported St Petersburg Southwest Wastewater Treatment Plant, completed in 2005, which is expected to significantly reduce the pollution of the Baltic Sea. The Northern Dimension has also facilitated HIV/AIDS public information and prevention projects in Kaliningrad, which is one of the most HIV/AIDS affected regions in
the Baltic Sea region. The Northern Dimension Partnership for Public Health and Social Affairs will look to build on this and other work to treat and prevent the spread of communicable diseases. Both of these projects are examples of constructive co-operation between the EU and Russia on issues that have a cross-border impact. The UK is not an active participant of the Northern Dimension process as it is a regional initiative. However, we support the initiative and particularly its efforts to increase co-operation between the EU and Russia. The Finnish Presidency have worked to develop the policy further and have agreed with the Northern Dimension partners a new political declaration with a framework document outlining the basis for practical implementation. They have also expressed their wish to make the Northern Dimension a “regional expression” of the EU-Russia “Four Common Spaces” roadmaps for increased cooperation. They intend to adopt this at a Northern Dimension meeting to be held on 24 November, in the margins of the EU-Russia Summit. The Russians have told us that the Northern Dimension is one of their top six priorities for working with the EU going into the German Presidency.

I enclose the Common Guidelines submitted to the General Affairs and External Relations Council on 13 November for your Committee’s information.

21 November 2006

REGIONAL POLITICAL PARTNERSHIP FOR PEACE, SECURITY AND DEVELOPMENT IN THE HORN OF AFRICA

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

Sub-Committee C considered the above Commission Communication at its meeting on 14 December and cleared it from scrutiny.

The Sub-Committee took a particular interest in the Commission’s plans for the Horn of Africa in view of their recent report on the EU and Africa. The Sub-Committee commends the Commission for seeking to tackle the region’s problems with a strategy and in a comprehensive way. As the Explanatory Memorandum states however, the test will be to convert the proposals into practical action, as at present they consist largely in proposals for dialogue and cooperation and none of the proposals are costed.

The Sub-Committee would like to be kept informed as this strategy develops into specific proposals. Specifically it would like to hear how the budgets are to be allocated and how the strategy is to be implemented without additional resources? How realistic is it to think that the EU’s input can help to solve the conflicts which afflict the region, and what prospect is there of the proposed regional partners responding to the EU’s efforts?

18 December 2006

RESTRICTIVE MEASURES AGAINST IRAN

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

Sub-Committee C considered the above docUment at its meeting on 1st March 2007 and decided to hold it under scrutiny.

The Sub-Committee strongly supports this Council Regulation providing for sanctions against Iran, and welcomes the stance taken by the UK Government. We would also support any further strengthening of sanctions.

We would be grateful for clarification on three substantive points.

The first concerns the issue of the sharing of information about court judgements, as provided for in article 14 of the draft Regulation. There are currently two projects underway under the Third Pillar which aim to build on the current EU system for storing and exchanging criminal record information among Member States (proposed Framework Decision on the organisation and content of the exchange of information extracted from the criminal record, Council doc. 5463/06; and Commission Working Document on the feasibility of an Index of third country nationals convicted in the EU, Council doc. 11453/06). Does the Government consider the scope of article 14 to cover the sharing of information on criminal convictions? How does the obligation in article 14 fit into the general scheme being developed under the Third Pillar? Do you have any concerns regarding the use of articles 60 and 301 to make provisions of this nature?

The second point relates to article 9(a)(iii). By way of derogation from article 7, article 9 provides for cases in which the competent authorities of the Member States may authorise the release of certain frozen funds or
economic resources, provided certain conditions are met. However, it is difficult to see how the condition stated in article 9(a)(iii) can be met, given that the requirement is for any payment not to be in breach of article 7(3). What is the precise objective of article 9(a)(iii)? Does the Government consider that this article is worded in accordance with this objective?

A further point concerns article 9(a)(i). Does the Government consider that this article reads correctly? Or should it read “The funds or economic resources shall not be used for a payment by a person, entity or body listed in Annex IV or V”? This latter wording would appear to be consistent with Article 8(c). The Subcommittee would be grateful for the assurances of the Government that this article reads as intended.

5 March 2007

Letter from Rt Hon Geoff Hoon MP to the Chairman

Thank you for your letter of 5 March about your Committee’s scrutiny of the Council Regulation concerning restrictive measures against Iran.

My officials have looked carefully at the points raised in your letter. On article 14 it is reasonable to conclude that the requirement to share relevant information, including judgements handed down by national courts, would include rulings in criminal proceedings brought in respect of sanctions violations. The purpose of article 14 is to improve the assessment and effectiveness of restricted measures, rather than for criminal justice purposes as envisaged in the Third Pillar projects you highlight. Provided the restrictive measures have been taken competently under articles 60 and 301, it would appear there is no obstacle to Member States using these articles as the basis for sharing relevant information to improve collective implementation of the sanctions in the EU.

On your second point, the objective of article 9 is to allow persons to honour liabilities which existed prior to their designation, so that funds are released under licence to the listed person or entity for payment to the party to whom the prior obligation was owed. The reference to article 7(3) in article 9 (a) (iii) ensures that funds cannot be released under licence for a pre-existing liability owed to, or receivable by, a designated person or entity. This reflects a provision in paragraph 15 of UN Security Council Resolution 1737 (2006) and FCO legal advisers are satisfied that the article is worded in accordance with this objective.

Related to this is your third point about the consistency of article 9(a)(i). In this case it is clear that the funds are to be released under licence to enable a listed person or entity to make payment of a pre-existing liability to a non-listed third party. This is not inconsistent with article 8 (c) where the aim is to prohibit the release of funds under a lien or judgement in favour of a listed person or entity. I am satisfied, therefore, that this article reads as intended.

20 March 2007

RESTRICTIVE MEASURES AGAINST UZBEKISTAN

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

I am writing to let your Committee know of plans to renew EU sanctions against Uzbekistan.

The current EU sanctions against Uzbekistan expire in November 2006. The EU is currently discussing whether to renew sanctions (targeted visa ban, arms embargo and partial suspension of the Partnership and Co-operation Agreement) adopted in November 2005. The Uzbeks still reject an international enquiry into the disproportionate and indiscriminate use of force at Andizhan in May 2005 and have refused to co-operate with a variety of UN Rapporteurs and an Independent Expert. The human rights situation in the country has continued to deteriorate alarmingly.

With the sanctions due for renewal, the Uzbeks have belatedly offered to discuss Andizhan with the EU and offered a separate human rights dialogue. There will be an EU-Uzbekistan Co-operation Council (CC) on 6 November. These promises have not been accompanied by any action to improve the human rights situation on the ground. Nevertheless some EU Member States wish to see the outcome of the CC before taking a final decision on the sanctions. There are three options under discussion:

(i) extension of all sanctions for 12 months (UK preferred option);
(ii) extension of the arms embargo and visa list for 12 months; and
(iii) extension of the arms embargo for 12 months.
The sanctions text is due for adoption at the GAERC on 13–14 November. Unfortunately the final proposed text of the sanctions will not be available in enough time to allow proper scrutiny due to the ongoing discussions outlined above. With this in mind the Clerk of the Commons Committee has recommended that I write warning that there is unlikely to be enough time for you or the Commons Committee to scrutinise the Decision.

In light of the need to allow the unbroken enforcement of EU sanctions against Uzbekistan I hope the Committee will understand if I decide to agree the Decision before scrutiny has been completed.

26 October 2006

RESTRICTIVE MEASURES AGAINST UZBEKISTAN: REVIEW OF VISA BAN

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

I am writing to let your Committee know of plans to review the EU visa ban imposed on individuals in Uzbekistan, who were responsible for the indiscriminate and disproportionate use of force in Andizhan. The Common Position which imposes the visa ban is due for renewal on 14 May 2007.

The Presidency plans for the decision on the future of the visa ban to be taken at 14 May General Affairs and External Relations Council. Unfortunately, despite our pressing, the Presidency has yet to come up with a text on the forthcoming review. Please be assured that once a draft text becomes available, I will deposit the text alongside an Explanatory Memorandum.

The possibility exists that the draft text could emerge after 2 May. This would unfortunately mean that there would not be enough time for your Committee to scrutinise the document before its adoption. The Government feels strongly that this measure should be renewed due to Uzbekistan’s failure to fulfil the two key criteria for lifting the ban: acceptance of accountability for the civilian deaths at Andizhan, and lack of concrete progress to improve the human rights situation in Uzbekistan. Therefore I hope the Committee will understand if I decide to approve the renewal of the Common Position before scrutiny has been completed.

27 April 2007

SCRUTINY OF ESDP: ATHENA, EUFOR, CONGO AND EUSEC CONGO

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

I should like to inform the Committee of the progress being made in the review of the ATHENA Mechanism. This is the mechanism used to administer the financing of common costs of EU operations which have military or defence implications. The original Council Decision (2004/197/CFSP) mandates the Council to undertake a review after every operation and at least every 18 months.

Discussion on the review is continuing at Working Group level. No substantive text is yet available. However, the Finnish Presidency are keen to see this review completed under their auspices and have listed an amending Council Decision as an item for consideration at the 11 December General Affairs and External Relations Council (GAERC).

The review has been informed by the experience of operations ALTHEA and EU Mission in the Democratic Republic of Congo (EUFOR RD Congo) as well as the military part of the EU supporting action to African Union Mission in Sudan (AMIS) in Darfur. The debate has focussed on three main areas: technical issues, supporting actions and common funding for operational deployments.

TECHNICAL ISSUES

The UK supports proposals to:

— Draw up a timetable, auditing and submitting ATHENA’s accounts to the Special Committee.
— Alter the mechanism for the election of chairman of the College of Auditors from amongst the members of the College.
— Make the mandate of members of the College renewable (once only).
— Align appointments with the financial year.
— Make in-year, on-the-spot checks of missions mandatory by the College of Auditors (to ensure Auditors conduct audit visits to Operational Head Quarters (OHQs) and Forces Head Quarters (FHQs) in theatre).

— Establish monthly reporting by the Operation Commander to the ATHENA Special Committee during the period prior to the adoption of a budget for an operation.

Following the EU’s experience in the Supporting Action to the AMIS the review is also considering how best to ensure that funding for such Actions can be financed through ATHENA where the Council so decides. The third area the review focused on essential elements required for operational deployments aimed at bringing the EU in to line with NATO.

NATO recently reached agreement on the common funding of strategic lift for short-notice deployments of the NATO Reaction Force for an interim period of two years. We expect the EU will introduce similar funding arrangements for short notice deployments of EU Battlegroups. Although this will not form part of the ATHENA review it will be attached to the Council Decision and handled as an I/A point. The UK position is that any new arrangements in the EU should mirror closely the agreement in NATO.

The Presidency aims to adopt the amending Council Decision at the General Affairs and External Relations Council on 11 December. However, given the lack of a depositable text and the speed at which this will progress over the next week, it will not be possible to submit an Explanatory Memorandum to your Committee ahead of the Council meeting. I hope therefore that the Committee will understand if I decide to approve the Council Decision before Scrutiny has been completed. An Explanatory Memorandum will be prepared and forwarded to the Scrutiny Committees once we have more clarity on the precise nature of the proposals.

7 December 2006

Letter from Rt Hon Geoff Hoon MP to the Chairman

When I wrote to you on 7 December 2006 to inform the Committee of progress on the review of the ATHENA Mechanism and alert you to the possibility that I would have to override scrutiny I undertook to provide the Committee with an Explanatory Memorandum, this is enclosed. (not printed)

When I wrote previously negotiations were ongoing. As it turned out, the UK was able to accept either of the two texts under consideration before the General Affairs and External Relations Council or any compromise negotiated between them. I did not make these texts available to the Committee, as it was not clear how the negotiations would end.

The key alterations from the Government’s point of view were the introduction of common funding for strategic airlift of EU Battlegroups, the inclusion of EU supporting actions in activities covered by Athena and the creation of a new Annex which provides for a set list of items to be funded in common when requested by the Operation Commander and approved by the ATHENA Special Committee.

The changes described above broaden the range of items available for common funding and so will potentially increase the financial costs to the UK. Equally, the effect could be to render the UK a net beneficiary of these changes in certain circumstances when UK assets are deployed.

The February General Affairs and External Relations Council will formally adopt the text as agreed at the 11 December Council. A consolidated text will then be finalised by the Secretariat. This will incorporate the 11 December decision and previous, amendments. A copy of this text will be made available to the Committee when it issues.

31 January 2007

Letter from the Chairman to Rt Hon Geoff Hoon MP

Thank you for your letters of 7 December and 31 January about the negotiating process for the above document. The Sub-Committee considered the document at its meeting on 8 February 2007, and decided to clear it from scrutiny. However we would like to make two points, concerning respectively procedure and substance.

Firstly, we regret that we have only received this proposal at the last minute. This is particularly unsatisfactory given the long lead-up phase in this case. In your letter of 30 January 2007, you explained that the reason for not submitting the draft texts to the Sub-Committee prior to your letter of 7 December was that negotiations were “ongoing”. 

However, you confirmed on 30 January that two draft texts were available, and that the UK Government would have been ready to accept either of these, or a compromise between them. We would welcome a commitment from the Government that in future it will submit such texts to the Sub-Committee, or, at the very least, that it will submit any draft Council decision at an early stage, in line with the principle of upstream scrutiny. I refer to my letter of 31 January on export controls of military technology.

The point of substance relates to amended Article 1, which, for the purposes of the Athena mechanism, defines “military supporting actions” (MSAs) as a sub-category of operations “which are not under the authority of EU headquarters”. You cite the EU supporting action to the African Union mission in Sudan as an example.

The Sub-Committee notes the new definition of a sub-category of EU operation, and is concerned to understand its full implications, particularly the scope of amended Article 1(d). Specifically, what is meant by “which are not under the authority of EU headquarters?” and what are the financial or other implications of this definition for the functioning of the Athena mechanism? Does this wording imply that Athena will be used to fund missions which are not under the command or authority of the EU (or its representative in the mission area, eg the Force Commander)? The Sub-Committee would be grateful for clarification of these points.

19 February 2007

Letter from Rt Hon Geoff Hoon MP to the Chairman

Thank you for your letter of 19 February in which you raised the scrutiny procedure and amendments to the ATHENA funding mechanism. I thought you might also like to be aware of recent developments on ESDP issues in the Democratic Republic of Congo.

COUNCIL DECISION AMENDING THE ATHENA FUNDING MECHANISM

Firstly, on the point of procedure, I would like to assure you that the Government remains committed to providing the European Scrutiny Committees with appropriate documents and time to fully scrutinise all EU decisions. We take this commitment very seriously, and I regret that this was not possible with the review of the ATHENA funding mechanism last December. We will endeavour to make sure in the future that the Committees have ample time to scrutinise relevant documents.

I should clarify that by 7 December 2006 we had not received either of the alternate texts. The Foreign and Commonwealth Office did have the latest version of the Council Secretariat paper, though it was clear from our discussions with Member States that this was not likely to survive the negotiations. I felt that to provide this text to the Committees when we were aware that it was highly unlikely to be the final document would have been misleading. Although we had yet to receive any alternate texts we were fully aware of the anticipated content of one and certain of the negotiating position to be adopted in the other. I regret not making these points clear in my letter of 31 January and for not providing, in my original letter, more detail of our expectations of how the negotiations would unfold.

Your second point addressed the change in the ATHENA mechanism to allow funding for Military Supporting Actions. This addition was made to address a weakness in the mechanism, made apparent during the establishment of the EU Supporting Action to the AU mission in Sudan. This had to be funded entirely by Member State contributions because ATHENA could not be used. Supporting Actions in this context are EU activities in support of a military or defence-related mission which is led by another organisation. I can reassure you that in the case of these supporting actions, EU common funding will now be available for EU activities—which are under the authority of the EU—but which are in support of a mission commanded by another organisation.

EUFOR RD CONGO

As I mentioned in my letter of 7 December 2006 the EU military mission to support the UN peacekeeping mission (MONUC) in the Democratic Republic of Congo has been completed. In order to formalise this the General Affairs and External Relations Council has agreed the attached Joint Action that formally closes the mission. The Joint Action specifies that the ATHENA mechanism will be used to meet any outstanding common costs incurred by the mission.
EUSEC RD Congo

The EU is in the process of finalising a small expansion of the EUSEC role and staffing. Two new slots—subject to Congolese approval—will be created to work in an advisory capacity alongside the staff of the newly appointed Prime Minister. Although EUSEC’s focus has been primarily on military reform these two experts will help lay the foundations for the broader EU SSR work scheduled to begin this summer.

7 March 2007

Letter from the Chairman to Rt Hon Geoff Hoon MP

Thank you for your letter of 7 March responding to my letter of 19 February with the clarification of events surrounding the Council Decision amending the ATHENA funding mechanism.

I am writing about an issue which arises in your paragraph on EUFOR RD Congo. You mention that the General Affairs and External Relations Council agreed a Joint Action to close formally the ED military mission to support the UN peacekeeping mission in the DRC. The Joint Action was not (as stated) attached to your letter though your officials provided the document readily when requested. It appears that this document should have been deposited for scrutiny by the Sub-Committee and will therefore constitute an override.

I know that efforts are made to ensure documents are deposited properly and to keep us informed in your letters. I understand, too, that this is probably an unintentional lapse, which only became apparent to us because it was referred to in your letter. It is however unfortunate that this has occurred.

Since drafting this letter we have received your letter of 20 March and thank you for your apology for the delay in depositing the document in Parliament. We note that the document has been agreed in Brussels and that this now constitutes an override.

We are glad to hear that you are amending your guidelines in order to prevent this from re-occurring. The Clerk to the Sub-Committee will be in touch with FCO officials to discuss the lessons learned.

28 March 2007

STRENGTHENING OF THE EUROPEAN NEIGHBOURHOOD POLICY

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

Sub-Committee C on 14 December considered the above document. Pending clearing the Communication from scrutiny, they expressed their intention to continue to scrutinise the European Neighbourhood Policy very closely.

You will recall that the Select Committee on the European Union recently published a report on EU enlargement (53rd report of session 2005–06), which makes a number of recommendations on the European Neighbourhood Policy (ENP). The report noted particularly that the ENP should be “membership neutral”: for those countries which might have the perspective of joining, membership of the ENP should be without prejudice to possible membership of the EU.

The Explanatory Memorandum contained very little detail on the financial implications of the ENP and we would be grateful for a full overview of financial commitments under the ENP for 2007–13, broken down by year, major subject area, and source of funding.

The Sub-Committee noted again that they had been given very little time to consider the document, and would request a longer lead time to enable them to give documents proper time for scrutiny.

19 December 2006

Letter from Rt Hon Geoff Hoon MP to the Chairman

Thank you for your letter of 19 December about the Communication from the Commission to the Council and the European Parliament on strengthening the European Neighbourhood Policy (ENP).

The Commission Communication makes clear that the ENP should remain distinct from the question of enlargement, that it should not be considered as an “alternative to enlargement” and that the ENP does not prejudice how the relationship of the eastern neighbours with the EU may develop in accordance with existing Treaty provisions. This is consistent with UK policy and with the recommendation of the report on EU enlargement by the Select Committee on the European Union (53rd report of session 2005–06) that the ENP should remain “membership neutral”.
I have submitted an Explanatory Memorandum on the European Neighbourhood and Partnership Instrument (ENPI), from which almost all of the funding required to support the ENP will come. A small amount of additional funding will be channelled through the thematic programmes defined in the Development Co-operation Instrument and through the new Instrument for Democracy and Human Rights. ENP partner countries will also have access to the Stability Instrument and the Nuclear Assistance Instrument.

There is no year-by-year breakdown of the anticipated spend from the ENPI. In 2007 the anticipated spend is €1.47 billion. A wide range of subject areas are eligible for funding. Funds are allocated to country programmes based on partner countries’ needs and absorption capacity as well as their implementation of agreed reforms. Programmes usually focus on three to four priority areas helping countries in their plans to tackle issues such as democracy, economic and social development and peaceful settlement of conflicts.

Finally, I realise that the Sub-Committee had little time to consider the Explanatory Memorandum before the General Affairs and External Relations Council on 11–12 December and the European Council on 14–15 December. However, we had no control over the timing of the publication of the Commission Communication and my Explanatory Memorandum was submitted promptly—just two days after the Communication was published.

I will of course continue to keep you up to date on developments with regard to the ENP and welcome the close interest you are taking.

9 January 2007

TOGO: SUPPORTING DEMOCRATIC DEVELOPMENT (13682/06)

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

Further to Explanatory Memorandum 13682/06 (COM(2006)577) of 20 October, I wish to update you on an amendment to the proposed Council Decision on Togo.

The EU-Africa Caribbean Pacific Working Group at the EU agreed on 24 October that the timeframe for Togo completing its 22 commitments should be extended for 12 months rather than the 24 months originally proposed. We believe it is right to support this shorter timeframe as Togo has already made good progress towards fulfilling their undertakings.

We have placed a Parliamentary Scrutiny Reserve pending your consideration of the text.

1 November 2006

TURKEY EU ACCESSION

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

I am writing to report the outcome of the discussions at the General Affairs and External Relations Council on 11 December regarding Turkey’s EU accession process. This follows the Explanatory Memorandum sent to you on 8 December on the Commission’s recommendation on Turkey, and is in advance of the European Standing Committee debate on EU enlargement to be held on 15 January.

As you know, the EU agreed in September 2005 to “follow up” on Turkey’s obligation to implement the Additional Protocol to the Ankara Association Agreement (AAP). The EU stated in that declaration that the opening of negotiations on the relevant chapters depends on Turkey’s implementation of its contractual obligations to all Member States. The EU further agreed that failure to implement Turkey’s obligations in full would affect the overall progress in the negotiations. By November 2006, Turkey had not implemented the AAP and the Commission therefore set out the action it recommended through a Communication issued on 29 November.

On the basis of this recommendation, the Council agreed that the Member States within the Intergovernmental Conference on Turkey’s accession to the EU would not decide on opening eight of the 35 chapters of the acquis, and that the remaining chapters would not be closed, until the Commission had verified that Turkey had fulfilled its commitments related to the AAP. The eight chapters are:

— Chapter 1 (Free movement of Goods);
— Chapter 3 (Right of Establishment and Freedom to Provide Services);
— Chapter 9 (Financial Services);
— Chapter 11 (Agriculture and Rural Development);
— Chapter 13 (Fisheries);
— Chapter 14 (Transport Policy);
— Chapter 29 (Customs Union); and
— Chapter 30 (External Relations).

The Council agreed to follow up and review progress by inviting the Commission to report developments in its regular annual reports. Furthermore, the Council emphasised that the screening process will continue and chapters for which technical preparations have been completed will be opened. The full text of the Council conclusions is attached (not printed).

The decision by EU Foreign Ministers, endorsed by Heads of State and Government, reaffirms their commitment that Turkey’s accession negotiations should continue. In this context, we are pleased that, on 20 December, Ambassadors agreed that Turkey can be considered to be sufficiently prepared for negotiations on the Enterprise and Industry chapter and invited Turkey to submit its negotiating position.

I attach the Foreign Secretary’s statement to Parliament on 18 December (not printed), and look forward to further discussion during the Standing Committee debate on 15 January.

9 January 2007
Agriculture and Environment
(Sub-Committee D)

AGRICULTURAL GUIDANCE AND GUARANTEE FUND (5433/07)

Letter from the Chairman to Lord Rooker, Minister of State for Sustainable Farming and Food, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum on the above Proposal was considered by Sub-Committee D at its meeting of 28 February 2007.

We agree with the Government that national interest rates are a matter for national management and therefore that such compensatory measures should not be encouraged. The budget neutrality of the measures is also of concern to us and we are glad that the Government is seeking clarification on this matter.

We are therefore surprised to learn that the Government does not intend to oppose the proposal but rather to abstain. For this reason, and ending further explanation of the Government’s position, we are retaining the proposal under scrutiny.

2 March 2007

Letter from Lord Rooker to the Chairman

Thank you for your letter of 2 March, setting out the position of Sub-Committee D as regards this proposal.

The Government intends to abstain rather than oppose the proposal, as the EU Commission has linked it to an earlier proposal which would abolish the system of public intervention purchases for maize (EM 16922/06 of 18 December 2006 refers). We are very much in favour of this first proposal, and would not wish to jeopardise it. Abstaining over the intervention financing proposal would send a clear signal that we do not support such compensation for higher than average interest rates, without impeding the progress of the maize proposal—which the Government views as the higher priority.

Hungary, which stands to lose most from the abolition of maize intervention, as it holds the majority of EU maize stocks, would also be the greatest beneficiary of the intervention financing proposal, as it has a higher than average (around 8%) interest rate. Hungary is trying to “de-link” the proposals, wanting to oppose the first, and support the second. Should their attempts prove successful, we would oppose the intervention financing proposal.

19 March 2007

AGRICULTURAL PESTICIDES (10930/06, 10937/06)

Letter from Lord Rooker, Minister of State for Sustainable Farming and Food, Department for Environment, Food and Rural Affairs to the Chairman

Thank you for your letter of 20 July 2006 concerning the Commission’s proposals for two pesticide active substances (azinphos-methyl and methamidophos).

These compounds are being considered as part of a European Community review of active substances under Council Directive 91/414/EEC. The Directive provides for the establishment of a positive list of active substances (Annex I) that have been shown to be without unacceptable risk to people or the environment. Companies supporting compounds through the review must submit a comprehensive dossier of data for each of them, which is evaluated by a designated rapporteur Member State on behalf of the Community. Each dossier generally contains around 200 scientific studies covering, for example, the compound’s physical and chemical properties, its toxicology and ecotoxicology, its residues in food, and its fate and behaviour in the environment. Rapporteurs may also consider other relevant published data, as well as evaluations carried out by regulatory authorities in other countries or by international organisations.

1 Correspondence with Ministers, 40th Report of Session 2006-07, HL Paper 187, p222.
Since neither compound is approved in the UK, we have relied to a large extent on the rapporteurs’ evaluations. In concluding that safe use has not been demonstrated, we are particularly concerned about the possible effects of azinphosmethyl on non-target arthropods and of methamidophos on operators, birds and mammals. This is not to say, however, that these compounds are necessarily unsafe; only that we believe a safe use of them has not been demonstrated by the data which the companies have provided.

The Commission’s current proposals would, if adopted, initially restrict use of both compounds to potatoes. However, should the companies wish to market either compound in the UK, we would have the opportunity to look more closely at the above areas of concern and would refuse an application if we were not satisfied. This leaves the question of residues in food should treated produce be imported into the UK. We have a double reassurance on this point. First this was not an area of concern for either compound during the review process. Second we would not expect quantifiable residues of either to occur in tubers. The Government’s Pesticide Residues Committee has looked for both compounds in potatoes as part of its monitoring programme, and found neither of them. In principle, applications could be made to extend their use to any other crop once they were included in Annex I to Directive 91/414/EEC. Such applications would require an additional dossier of supporting data and we would have an opportunity to assess the implications for consumers in each case.

There have, however, been developments in the Council’s consideration of these proposals. Following discussions between attachés, only two of the proposals—for azinphos-methyl and vinclozolin—are subject to a qualified majority against and the Commission will have to reconsider its position on these compounds. For the remaining six (which would include methamidophos), there is a non-opinion which should lead to adoption of the proposals by the Commission under comitology rules. The Presidency has indicated that it will ask Ministers to confirm the position on all eight proposals at the September Council. In the circumstances (and given that we have the safeguard of a further national evaluation before methamidophos could be approved in the UK), I hope you will be able to lift your reserve on these proposals.

9 October 2006

Letter from Lord Rooker to the Chairman

Further to my letter of 8 August 2006, I am writing to let you know the outcome of the Commission’s proposals for two pesticide active substances (azinphos-methyl and methamidophos).

The proposal for azinphos-methyl was rejected by a qualified majority of Member States at the Agricultural Council on 18 September and returned to the Commission to reconsider, in accordance with comitology procedures. The Commission has, however, confirmed that it does not intend to bring forward any further proposals for this substance. Since the Regulation establishing the review of pesticides requires a decision by the end of 2006, its approval will lapse by default and it will be withdrawn.

The Council initially reached no opinion on the proposal for methamidophos, which would normally have led to its adoption by the Commission under comitology procedures. However, given the predominant opinion against it, the Commission agreed to reconsider, in accordance with a previous undertaking to the Council, and came forward with a revised proposal to approve methamidophos for only 18 months (rather than the seven years initially proposed, or the 10 years which are standard). They put this proposal to the Competitiveness Council on 25 September and, although we continued to vote against it, there was no qualified majority and the proposal will now be adopted by the Commission.

25 October 2006

Letter from the Chairman to Lord Rooker

At its meeting on 22 November 2006 Sub-Committee D considered your letters of 8 August and 25 October 2006 on the above draft Directives.

We are pleased that the Commission has shown some flexibility in its approach but we share the Government’s concerns about placing methamidophos onto the approved list of pesticides. While clearing this item from scrutiny, therefore, we would ask you to keep us informed of any further developments on this issue.

22 November 2006

APPLICATION OF KYOTO PROTOCOL TO BELARUS (14156/06)

Letter from the Chairman to Ian Pearson MP, Minister for Climate Change and the Environment, Department for Environment, Food and Rural Affairs

At its meeting on 22 November 2006 Sub-Committee D considered your Explanatory Memorandum dated 2 November on the above Proposal.

We agree that it is crucial to ensure that the targets set by Belarus are consistent with the global fight against climate change. We also share your views with regard to legal base and subsidiarity. Consequently, we are content to clear the line you are proposing to take and we trust that you will pursue these matters with vigour in discussions with other Member States and the Commission and report back to us in due course.

22 November 2006

Letter from Ian Pearson MP to the Chairman

Thank you for your letter of the 22 November regarding the outcomes of the issues discussed in Explanatory Memorandum (EM) 14156/06 of 18 October 2006, concerning a proposal for a Council Decision establishing the position to be adopted on behalf of the European Community with regard to a proposal by Belarus for an amendment of the Kyoto Protocol to the UNFCCC.

As stated in EM 14156/06, the amendment was debated at the Second conference of the Parties to the Kyoto Protocol (COP/MOP2) and Twelfth Conference of the Parties (COP12) to the UN Framework Convention on Climate Change (UNFCCC) in Nairobi in November, with the result that Belarus were successful in their request to be added to Annex B (ie countries with a quantified reduction commitment of their greenhouse gases) to the Kyoto Protocol.

Belarus did make a number of concessions during the negotiations in Nairobi. They had originally proposed a reduction commitment of 95%, but finally agreed to reduce their emissions to 92% of their base year (1992) in the period 2008–12. As stated in EM 14156/06, the UK did not support Belarus’s base year because their emissions are currently well below 92% of base year levels (at around 65%) but the target they have adopted is as low as any target listed in Annex B. The EU argued this line in negotiations in the contact group. Belarus also agreed to an addition of 7% of their assigned amount to the “commitment period reserve” the amount they cannot trade in 2008–12.

There are other countries listed in Annex B with current emission levels well below their targets. The UK argued in EU discussions in Nairobi that it is now nine years after Kyoto and more realistic targets are appropriate, to avoid (a) gifting Belarus a potential windfall profit from the sale of “hot air” under the Protocol’s emissions trading scheme and (b) setting an unwelcome precedent for any future negotiations with countries seeking to join Annex B. Belarus gave assurances that any income from emissions trading would be invested in environment/climate friendly schemes. This reassured all non-EU Parties and a majority of EU Member States.

Faced with the prospect of a vote on the proposal, which Belarus had the right and the clear intention to ask for (which would have been unprecedented in the UNFCCC/Kyoto Protocol process and which the EU could not win) the UK accepted the majority view that the EU should not oppose the proposal. Had another Party opposed the proposal and a vote been called, the opposition of the UK and one or two other Member States meant that the EU (on a MS by MS basis) would have abstained. The result, however, would have been the same—Belarus would have been deemed to have secured acceptance to its proposal.

Finally, in order for the amendment to come into force, it must be ratified by three quarters of the Parties to the Kyoto Protocol. Since the UK did not support the decision we are not obliged to ratify the amendment.

17 January 2007

AQUACULTURE: ALIEN AND LOCALLY ABSENT SPECIES (8296/06)

Letter from the Chairman to Ben Bradshaw MP, Minister for the Local Environment, Marine and Animal Welfare, Department for Environment, Food and Rural Affairs

Your Partial Regulatory Impact Assessment on the above Proposal was considered by Sub-Committee D at its Meeting on 13 December 2006.
We note that you have been successful in amending the draft Regulation with a view to reducing the level of bureaucracy involved and we can therefore release the Commission Proposal from scrutiny.

13 December 2006

AVIAN INFLUENZA

Letter from Lord Rooker, Minister of State for Sustainable Farming and Food, Department for Environment, Food and Rural Affairs

I am writing to a selection of interested Peers, and Ben Bradshaw to MPs, to update you all on a number of issues and developments relating to avian influenza (“bird flu”). I hope this will aid greater understanding of the key challenges faced in this area and co-operation to educate members of the public you come into contact with who may have concerns in this area—particularly the poultry owning public.

There are a number of significant uncertainties surrounding the future risk that we will be facing from avian influenza but a higher risk period for the UK of an outbreak of high pathogenic avian influenza is the Autumn as migratory birds return from their summer breeding grounds.

RISK ASSESSMENT

According to the latest qualitative risk assessment carried out by international animal health experts at Defra: HPAI H5N1 situation in Europe and potential risk factors for the introduction of the virus to the UNITED KINGDOM which was published on the Defra website at: <http://www.defra.gov.uk/animalh/diseases/monitoring/pdf/hpai-h5n1-developments060706.pdf>

The geographic spread of H5N1 means that there is a constant risk of its introduction to the UK, and we have measures in place to mitigate this risk. However, experience from the last year shows that there is an increased risk of the introduction of H5N1 to the UK during the wild bird migration season. While this risk is likely to continue during this autumn, it is less likely that the virus will move direct to the UK without being detected in the rest of the EU first. Any increase in the spread of the virus within the EU will increase the risk to the UK.

SURVEILLANCE

An updated and revised strategy to screen wild birds for the presence of highly pathogenic H5N1 avian influenza was initiated in September. Defra’s targeted surveillance strategy will involve sampling for the disease in areas which have higher numbers of migrating waterfowl and larger poultry populations.

The programme, being introduced for the autumn migration of water birds from more northerly latitudes, will have three main elements:

— Testing of live birds (which are then released);
— Testing shot birds (shot as part of normal legal wild fowling activities); and
— Testing certain species of dead wild birds found in designated areas.

Species thought to be a greater risk for introducing avian flu, in particular ducks, geese, swans, gulls and waders, will be targeted. Screening for the virus will take place in designated surveillance areas where a sample of reported dead birds will be collected and tested. Unusually high numbers of dead birds will continue to be investigated throughout the UK as in previous years. This is a separate survey to ascertain the causes of these deaths.

The survey is a strategic targeted survey and not all birds will be collected. The likelihood of a wild bird that is found dead being infected with avian influenza is very small. Thousands of samples have been tested already but there has so far only been one case of highly pathogenic H5N1 detected in a sample from a dead swan found at Cellardyke in Scotland in April.

It is normal for a proportion of wild birds to carry low pathogenic avian influenza (LPAI) viruses so it would not be unusual to detect some LPAI viruses over the course of the survey. These are normally of little significance to human or animal health.

The Department of Agriculture and Rural Development for Northern Ireland will send their own letter out.
**Biosecurity**

In response to the level of risk officials in the Department have used the summer period to reinforce key messages on biosecurity and surveillance amongst poultry owners as well as members of the public ahead of the Autumn migration. A wealth of materials has been produced providing comprehensive advice on what signs to look out for which could indicate presence of the bird flu virus in poultry (respiratory distress, swollen head, dullness, a loss of appetite and a drop in egg production) and how to keep premises biosecure to prevent incursion of the disease whether it be from contact with wild birds, other animals, people and equipment on the premises where the birds are kept.

Should you like more information there is an order form attached with this letter for posters and publications on all issues concerned with protecting poultry from bird flu including how to register on the GB Poultry Register which will help the department better communicate with poultry owners should the need arise to warn of heightened risk to their birds and the need to take additional action such as isolating birds from wild birds.

**Vaccination**

In addition we are constantly working to improve our ability to respond to avian influenza. In view of uncertainties in the nature and spread of the virus, we are obtaining a supply of 10 million doses of avian influenza vaccine for potential use in poultry and other captive birds, as part of sensible contingency planning. This is in addition to the 2.3 million doses obtained earlier in the year for any preventative vaccination of zoo birds. I should stress that this does not change our policy on the use of vaccine against avian influenza. Although currently available vaccines do prevent mortality, they do not prevent birds from becoming infected and shedding the disease and they also potentially mask the disease and slow down the time taken to detect it. For that reason, we do not intend to use general vaccination ahead of an outbreak or as an immediate disease control response.

However, during an outbreak we will keep the need for vaccination under close review depending on the circumstances at the time. The decision to vaccinate will be based on expert veterinary, epidemiological and scientific advice of the most effective method of disease control. Good biosecurity, surveillance, early reporting, rapid action and culling are the most effective ways of preventing and tackling disease. However, as well as obtaining a supply of vaccine, we are also working with stakeholders on the details of a vaccination delivery plan so that we have all disease control options available to us.

**Text and Email Alert Service**

Finally, following good advice from the Efra committee we are offering you the opportunity to be alerted to the latest developments on bird flu. We regularly send email updates to stakeholders when there are any significant developments. If you would like to receive similar updates then please send your contact details to Ian Hill in Defra at the following email address: <Ian.Hill@defra.gsi.gov.uk> Also in order to minimise any delay in our ability to notify you should there be an avian influenza incident in your area, then please also send Ian your mobile or other contact details.

**Further Advice**

If you or people you come into contact with wish to find out further information about avian influenza, the latest information and comprehensive guidance can be found at <www.defra.gov.uk> and by ringing the Defra helpline on 08459 33 55 77.

20 October 2006

**BIOFUELS PROGRESS REPORT (5389/06)**

Letter from the Chairman to Stephen Ladyman MP, Minister of State for Transport,
Department for Transport

Your Explanatory Memorandum on the above report was considered by Sub-Committee D at its meeting of 14 March 2007.

As you will be aware, the Committee published a Report on The EU Strategy on Biofuels on 20 November 2006 and therefore has a particular interest in the matter.
We were particularly pleased to note the Commission’s apparent interest in the development of fuel obligations as a tool to promote the use of biofuels. One of the central Recommendations made in the Report was to suggest that the Biofuels Directive should be amended to require Member States to use biofuel obligations as a tool to achieve the consumption targets. We wonder whether, in advance of legislative proposals, the Government intends to follow up on the Commission’s positive language regarding fuel obligations?

We have noted the outcome of the 8–9 March European Council and in that context we would appreciate clarification on the Government’s approach to binding targets, in particular as to whether there could be a negative impact upon the RTFO. We would underline the point that a binding target unlinked to criteria for the sustainable production of biofuels could in the end be as detrimental to the environment and climate change as the current carbon-based fuels.

The issue of the sustainable use of biofuels is one that was raised in our Report and is highlighted by the Commission. We note in addition that the Energy Council referred to it in the Council’s Conclusions of 15 February 2007. The European Environment Agency concluded on 26 February that “an appropriate policy framework combined with advice and guidance to bioenergy planners, farmers and forest owners on environmental considerations needs to be put in place to steer bioenergy production in the right direction”. We urge the Government to work with the Commission with a view to seeking policy responses that satisfactorily address the sustainability concerns. We welcome the Government’s support for the proposal that blending limits be increased. This was one of the Recommendations in the Committee’s Report and we do attach a great deal of importance to it.

Finally, we note that the Energy Council accepted the binding character of the 10% target subject to a number of conditions including the commercial availability of second-generation biofuels. As a Committee we welcome the development of second-generation biofuels and we called in our Report for more Research and Development in this area. The Commission’s own Progress Report emphasised the need both for further research and for market-based incentives. We would be interested to know how the Council and the Government will respond to this challenge.

We are content to clear the Communication from scrutiny and we look forward to clarification on the points made above.

19 March 2007

BLUEFIN TUNA—RECOVERY PLAN (6890/07)

Letter from the Chairman to Bed Bradshaw MP, Minister of State for Local Environment, Marine and Animal Welfare, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum on the above proposal was considered by Sub-Committee D at its meeting of 28 March 2007.

We welcome ICCAT’s adoption of a 15-year recovery plan for bluefin tuna in the Eastern Atlantic and the Mediterranean. We share your concerns, however, that the plan is not as sustainable as would have been preferable.

You state that you will seek to ensure that the minimum landing size requirement is implemented earlier than 13 June 2007. We are supportive of this, and we are also pleased to note that you intend to question the decision not to penalise over-catches in 2005 and 2006. In that context, we would be interested to receive any information that you may have on the level of over-catches in 2005 and 2006 and therefore on the impact of this decision upon the 2007 TAC.

We are content to lift scrutiny on the Proposal and look forward to examining the Community’s proposed multi-annual recovery plan in due course.

29 March 2007
Letter from Ben Bradshaw MP to the Chairman

Thank you for your letter of 29 March on the above mentioned Explanatory Memorandum asking for information on over-fishing of bluefin tuna in 2005 and 2006.

Please find attached an annex setting out the details as they are known to us. You will see that France is the only country to declare any significant over-fish in these years. However, illegal fishing is commonly thought to be a more widespread problem in the bluefin tuna fishery. Scientists estimate that the total allowable catch (TAC) is exceeded by 20,000 tonnes a year. The majority of this overfish is undeclared. It is thought both EU and non-EU countries are responsible.

Therefore, while I believe it is important to press the European Commission to enforce payback for France’s declared overfish, I am also seeking to have the problem investigated more comprehensively. We expect the Commission to send inspectors to EU Member States involved in the bluefin tuna fishery to ensure maximum compliance with the rules. Where compliance is poor, legal action should be taken. At the same time, it is worth noting that the ICCAT-agreed recovery plan includes a comprehensive set of control measures which, if implemented effectively, would significantly reduce the margin for illegal fishing.

It is difficult to say what effect any payback would have on the 2007 quotas since this situation is unprecedented. The usual ICCAT rules governing payback, calculated over two year periods, will not apply because ICCAT has agreed an amnesty on the 2005 and 2006 overfish. What we are calling for is the application of standard Common Fisheries Policy rules, above any ICCAT amnesty. But taking such a step has never been proposed before. I have been pressing the Commission strongly that it should apply the normal CFP rules in this case but have not yet had a satisfactory response.

24 April 2007

Annex A

Below is a table outlining the reported overfishes in tons of Mediterranean Bluefin Tuna in 2005 and 2006. However, 2006 figures are not officially reported until later in the year so they may be added to.

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<th>% Overfish</th>
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<td>Global TAC</td>
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<td>2006</td>
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<td>6,582</td>
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<td>Total French overfish</td>
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COMMON AGRICULTURAL POLICY—MODULATION OF FUNDING FROM PILLARS 1 TO 2 (10014/06, 10016/06)

Letter from Lord Rooker, Minister for Sustainable Farming and Food, Department for Environmental, Food and Rural Affairs to the Chairman

Further to your letter of 20 July 2006,5 I wanted to give you a brief update on the progress of the above draft regulation following its consideration in Lords’ Sub Committee D. I would also like to respond to your letter of the same day to Barry Gardiner6 concerning rural development funding 2007–13, as the issues you raise in both of these letters are closely related.

Taking modulation first, the proposal is currently subject to consultation procedure with the European Parliament. On 14 November, the Parliament voted in favour of rejecting the Commission’s proposal outright. The Special Committee for Agriculture also discussed the draft voluntary modulation regulation on 14 November, and unanimously agreed that they remained supportive of the proposal as it implemented part of

the December 2005 European Council agreement on future financing for 2007–13. We now expect the Commission to refer the proposal back to the Parliament who will allow the Agriculture Committee up to two further months to reconsider it. This means that it is unlikely that the opinion will be provided formally until January 2007 at the earliest.

When the consultation procedure has been concluded, the dossier will be referred back to Agriculture Council for negotiation and adoption. Once the new voluntary modulation regulation has been formally adopted, the UK will be able to finalise rural development financing arrangements for 2007–13, including the rate of voluntary modulation and any domestic match-funding that will apply.

I can assure you that in all discussions on this dossier at European level, the UK has objected to the aspect of the Commission’s proposal which, contrary to the December 2005 Council conclusions, would require voluntary modulation funds to respect the minimum expenditure per axis rules governing other rural development funds. The UK has also made strong representations that voluntary modulation should continue to operate on a regional basis without a franchise applying as it currently does.

Turning to other rural development funds and your letter to Barry Gardiner, as you know, proposal 10016/06 set overall rural development budgets and received legislative effect as Council decision 493 of 19 June 2006. This paved the way for the European Commission to prepare the detailed breakdown of this funding by Member State through Commission Decision 636 of 12 September 2006. This decision confirmed that the UK’s allocation for 2007–13 from the European Agricultural Fund for Rural Development will be €1,909,574,420, approximately £1.3 billion.

You raise a number of concerns in your letter to Barry Gardiner relating to the overall level of rural development support, balance between the two pillars of the CAP, the allocation of funds to Member States, and the levels of compulsory modulation. It is no secret that the UK is disappointed with the allocation methodology used by the Commission to share EAFRD funds amongst Member States. Equally, we had hoped that the December 2005 European Council would have agreed to increase rural development funding as a proportion of overall CAP spending, as this would have been consistent with the direction expressed in the joint Defra/Treasury Vision for the CAP. In the absence of this, it was of course crucial that the Council agreed the provisions which should allow the UK to continue to use the voluntary modulation mechanism in order to supplement its rural development spending.

The UK Government hopes that the issues you have rightly highlighted will be addressed as part of the 2008–09 CAP healthcheck and subsequent EU budget review, both of which were important aspects of the 2005 budgetary agreement. Commissioner Fischer Boel has already indicated that she hopes to secure additional compulsory modulation as part of the health-check, and the UK is supportive of this notion. The health-check will provide a valuable opportunity for all Member States to debate the long-term future of the CAP, including the balance between the two pillars and distribution of funds to Member States.

29 November 2006

Letter from Lord Rooker to the Chairman

I wrote to you on 29 November 2006 to provide you with an update on the progress of the draft European Council regulation on voluntary modulation of CAP payments, and undertook to keep you informed of developments.

On 13 February 2007, the consultation procedure for this dossier with the European Parliament was concluded. Although the Parliament formally rejected the proposal, under the consultation procedure this allowed the dossier to be returned to Agriculture Council for negotiation and finalisation. The German Presidency issued a draft compromise version of the text on 2 March and a copy is enclosed with this letter. The Presidency’s intention is that the proposal will be considered in the Agriculture Council on 19 March.

The draft compromise text is significantly different from the version that was retained under scrutiny following consideration at a meeting of Sub-Committee D on 19 July 2006. Importantly, the compromise text recognises that special considerations are required for those Member States who have operated voluntary modulation in the past, principally (but not exclusively), the United Kingdom. Consequently, this version of the compromise text, if adopted, would permit the United Kingdom to operate voluntary modulation on a regional basis, with different rates allowable in England, Scotland, Wales and Northern Ireland. The new version of the text would also allow us to continue to operate voluntary modulation, without it being subject to the €5,000 franchise governing compulsory modulation. This would help us to keep the rate of voluntary modulation applied to a lower level than would otherwise be the case. You may recall that these issues concerning regionalisation and the franchise were two of the key UK concerns about this dossier highlighted in my Explanatory Memorandum of 14 June 2006, so these are welcome developments.
The third concern expressed in the above-mentioned Explanatory Memorandum was that the regulation ignores the European Council conclusions with regards to the minimum expenditure per axis rules. There has been no change to this aspect of the regulation in the draft compromise text, so as drafted, 10% of voluntary modulation funds would have to be spent on Axis 1 measures, and 10% on Axis 3 measures.

There are two further issues addressed in the compromise proposal. The first is an indication, in Article 1, that if there were to be any future increases in compulsory modulation, which applies across all Member States, then voluntary modulation would be reduced. The UK supports this approach, which also addresses one of the key concerns raised by the European Parliament.

The second addition is a requirement on those Member States intending to apply voluntary modulation to demonstrate that they have made an assessment of its impact. Again, the UK is content with this requirement—we would in any case expect to provide a justification for our use of voluntary modulation.

As you may be aware, discussions on voluntary modulation are still continuing with the European Parliament. Although the formal consultation procedure on this dossier has concluded, as a result of its objections to voluntary modulation, the European Parliament has held in reserve 20% of the 2007 budget for rural development. The Presidency is seeking a solution which would enable this reserve to be lifted. We are continuing to press for voluntary modulation to be settled as quickly as possible in a manner which provides the necessary flexibility we need in the UK.

There is therefore no guarantee that the Presidency compromise text will not be subject to further change in the final stages of negotiation. It remains a possibility, however, that the proposal will be put to a vote at the Agriculture Council on 19 March. I should be grateful therefore if your Committee would now give us clearance on this proposal to enable the UK to reach the best deal possible in the Council. I shall, of course, report back on the Council’s deliberations.

8 March 2007

Letter from the Chairman to Lord Rooker

The above dossier was considered by Sub-Committee D at its meeting of 14 March 2007 on the basis of your letter of 8 March.

In your letter of 29 November 2006 you emphasised that the UK Government had three priorities in the negotiations—to ensure that voluntary modulation can operate at the regional level; to ensure that it should continue to operate without the £5,000 franchise; and to avoid the imposition of “minimum expenditure per axis” rules.

We understand from your letter that the Presidency Compromise has resolved the first two issues but not the third. We understand also that the Compromise is expected to receive the support of the Commission and all Member States. In addition, we understand that the European Parliament has been using its budgetary powers to oppose the Proposal but that the Parliament may well agree to a text restricting voluntary modulation to the UK and Portugal.

We appreciate the importance of gaining agreement on this dossier, particularly as the right of Member States to apply voluntary modulation was agreed as part of the December 2005 budgetary compromise, and we are therefore content to release the Proposal from scrutiny in the expectation that the above policy objectives will be met in the final text. We would, however, appreciate written information from you on the content of the final agreement and further clarification of the likely impact of the “minimum expenditure per axis rules” throughout the UK.

15 March 2007

COMMON FISHERIES POLICY: IMPROVING FISHING CAPACITY AND EFFORT INDICATORS (6116/07)

Letter from the Chairman to Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare, Department of Environment, Food and Rural Affairs

Your Explanatory Memorandum on the above Communication was considered by Sub-Committee D at its meeting of 21 March 2007.

We agree with the Government that there is a need to ensure more effective control of fishing activity and the Commission’s Communication is certainly a useful contribution to the debate. In considering the Communication the Committee noted the relevance of satellite monitoring to control over fishing effort. The Committee would be grateful therefore for information on the impact which the introduction of satellite
monitoring has had on fisheries enforcement in UK waters. In addition, and in the light of technological advances, the Committee has asked to what extent satellite monitoring is able to assist in monitoring the use of certain types of fishing gear.

More generally, as some of the ideas contained in the Communication could prove burdensome to the industry, we consider that it will be important to reflect carefully on any legislative proposals that come forward.

In the meantime, we are content to release the Communication from scrutiny and look forward to receiving information from you on satellite monitoring.

26 March 2007

Letter from Ben Bradshaw MP to the Chairman

Thank you for your letter of 26 March about the Explanatory Memorandum on the communication from the Commission on improving fishing capacity and effort indicators under the Common Fisheries Policy.

In your letter you asked two questions, firstly what impact the introduction of Satellite Monitoring has had on fisheries enforcement, and secondly to what extent satellite monitoring is able to assist in monitoring the use of certain types of fishing gear.

In answer to your first point, the introduction of satellite monitoring has:

— provided a saving of 650 flying hours for the fisheries Aerial Surveillance Contract;
— ensured more targeted deployment of resources, in particular to Fisheries Patrol Vessels, especially where fishing activities are restricted; and
— provided an early indication of where vessels intend to land. The Marine Fisheries Agency can then use this information to decide where shore side resources would be best placed.

With regard to your second point, satellite monitoring provides us with very little information about the use of fishing gear. British Sea Fisheries Officers can use local knowledge of fishing methods to deduce the probable types of fishing being carried out. Satellite tracking provides two hourly GPS position reports of vessels along with their speed and course which in the case of trawlers, may indicate whether the vessel is towing gear and in the case of a vessel using fixed nets, it may provide information about when nets are set and tended but little else.

25 April 2007

COMMON FISHERIES POLICY: REGIONAL ADVISORY COUNCILS (15984/06)

Letter from the Chairman to Ben Bradshaw MP, Minister of State for Local Environment, Marine and Animal Welfare, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum dated 11 January 2007 on the above proposal was considered by Sub-Committee D at its meeting of 24 January 2007.

We agree with the Government that the Regional Advisory Councils have a valuable role to play in the Common Fisheries Policy, and that the proposal should lead to a helpful easing of the administrative burden on the RACs.

We are therefore content to release the Proposal from scrutiny.

24 January 2007

COMMON ORGANISATION OF AGRICULTURAL MARKETS (16922/06)

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

Your Explanatory Memorandum (EM) on the above proposal was considered by Sub-Committee D at its meeting of 31 January 2007.

As you know from your discussions with Sub-Committee D on 25 October 2006, we agree that the CAP simplification agenda is an important one and we are therefore pleased that the Government is supporting the proposal for a single CMO.
We were interested to note both the RIA’s analysis that the simplicity of a single legal text could be a useful contribution to the debate on the future of the CAP and the comment in the EM that any move in the direction of further CAP reform may cause problems for some Member States. CAP reform is, as you know, a matter to which we attach importance, and we plan to begin an inquiry later this year into the scope for this as part of the 2008 Health Check.

In these circumstances we are content to release the proposal from scrutiny but we would be grateful if you would keep us closely informed as to progress on this dossier and in particular on the extent to which linkages are drawn in the course of negotiations with CAP reform discussions.

31 January 2007

Letter from the Chairman to Lord Rooker

Your Explanatory Memorandum on the above proposal was considered by Sub-Committee D at its meeting of 21 February 2007.

The Proposal is a logical one. We welcome the Government’s intended approach and we are thus content to release the Proposal from scrutiny.

21 February 2007

CONTROL OF SHIPMENTS OF RADIOACTIVE WASTE AND FUEL (5058/06)

Letter from Ian Pearson MP, Minister of State for Climate Change & Environment, Department for Environment, Food and Rural Affairs to the Chairman

I am writing to inform you of an issue which is to come before the General Affairs Council on 13 November. This concerns a proposal for a Council Directive to amend the current control regime for shipments of radioactive waste between Member States and into and out of the Community.

An Explanatory Memorandum was prepared and submitted on 24 January 2006, however it did not clear scrutiny due to uncertainties over the regulatory impact of the measure on the Nuclear Decommissioning Authority (NDA).

The proposed Directive would replace Directive 92/3 Euratom and would extend the scope of the regulatory regime to shipments of spent nuclear fuel for reprocessing. Atomic Questions Group has agreed to this extension of the scope. The proposal would not materially change the existing administrative scheme and extension of its scope to cover spent fuel should not imply considerable additional costs.

When the Commission first introduced its proposal in 2004, it was felt that extension of the control regime to shipments of spent fuel could potentially impose a new regulatory burden on the NDA and that this could involve substantial costs. This statement was based on the NDA’s aspiration of securing a substantial amount of new reprocessing business and also on the prospect that Member States politically opposed to reprocessing could cause costly delays by refusing to allow such shipments to transit their territory. Neither of these assumptions now appears to be valid. In the latter case, the text of the Directive has been amended to safeguard the free passage of shipments through the territorial waters of other Member States and to limit refusals of consent by transit States to breaches of transport regulations.

I very much regret that it has not been possible to provide the Committee with an RIA so that scrutiny could be completed for Council. However, I wish to inform your Committee that this proposal is not contentious, does not alter in any significant way the current control regime for shipments of radioactive waste and we will be supporting the proposal. As such it is to go to Council on 13 November as an “A” Point.

9 November 2006

DATA ON LANDINGS OF FISHERY PRODUCTS (14571/05)

Letter from Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare, Department for Environment Food and Rural Affairs to the Chairman

I am writing to inform your Committee of the current position on this dossier following the informal contacts between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at First Reading.
The substance of the original proposal was set out in EM 14571/05 of 5 December 2005 which was cleared from scrutiny by your Committee on 13 December 2005. The Council Working Party on Statistics examined the proposal on 28 November 2005 and reached agreement on a number of amendments to be made. Subsequently, following informal talks between the Austrian Presidency, the Commission and the European Parliament, it appeared that a first-reading adoption of the proposal under the co-decision procedure would be possible on the basis of a set of compromise amendments. These were approved by the European Parliament’s Committee on Fisheries on 3 May 2006, and corresponded to a very large extent to the amendments agreed in the Council Working Party on Statistics.

In the original proposal, the Commission sought to reduce the frequency of the requirement to provide data and allow an increased use of derogations within the collection process, both of which helped to simplify and reduce the burden of collecting the data on Member States. At the same time, some extra data on classification of fishery products and details on the final use of the products was identified as needed. The compromise amendments (which are consistent with those identified by Member States as desirable at the Council Working Party on Statistics) are such that much of this additional data has only to be provided on a voluntary basis, reducing the level of additional burden placed on Member States and the fishing industry. The other parts of the compromise amendments relate to clarifying definitions used within the legislation and calling for a review every three years of the usefulness and effectiveness of the requirements.

The UK Government supported the original proposal and compromise amendments. The aims of the proposal were consistent with UK objectives to reduce the burdens placed on both governments and the fishing industry. In addition the proposal and compromise amendments are consistent with the UK principles of requirements being “fit for purpose” and of simplifying existing requirements when possible during reviews of statistical areas.

In order to make possible a first-reading adoption of the proposal at its plenary session in June 2006, the European Parliament sought reassurances on the Council’s position prior to its vote in plenary. The Council, through the Austrian Presidency, did agree to the amendments in the document.

The European Parliament adopted the compromise amendments at its plenary session on 15 June 2006. The dossier is now expected to be adopted as an “A” point at one of the Councils scheduled during late 2006; an exact date is not yet known. I apologise for the delay in updating you.

31 October 2006

Letter from Ben Bradshaw MP to the Chairman

I am writing to inform your Committee of the current position on this dossier following the second reading in the European Parliament.

The substance of the original proposal was set out in EM 14571/05 of 5 December 2005 which was cleared from scrutiny by your Committee on 14 December 2005. The Council Working Party on Statistics examined the proposal on 28 November 2005 and reached agreement on a number of amendments to be made. Subsequently, following informal talks between the Austrian Presidency, the Commission and the European Parliament, it appeared that a first-reading adoption of the proposal under the co-decision procedure would be possible on the basis of a set of compromise amendments. These were approved by the European Parliament’s Committee on Fisheries on 3 May 2006, and corresponded to a very large extent to the amendments agreed in the Council Working Party on Statistics.

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The European Parliament adopted the compromise amendments at its plenary session on 15 June 2006. The dossier went through its second reading on 14 December and, as there were no further amendments submitted, the President of the European Parliament declared the legislation to be adopted.

29 January 2007

EMPLOYMENT IN RURAL AREAS: CLOSING THE JOBS GAP (5051/07)

Letter from the Chairman to James Plaskitt MP, Parliamentary Under Secretary of State,
Department for Work and Pensions

Sub-Committee D considered your Explanatory Memorandum on the above Communication at its meeting of 21 February 2007.

The Committee takes a strong interest in matters relating to rural development, particularly as this has a strong link to discussions on the future shape of the Common Agricultural Policy.

We are supportive of the robust line adopted by the Government and we are therefore content to clear the proposal from scrutiny. We note, however, that discussions are scheduled in Council “to draw conclusions for future European rural development policy”. Given our strong interest in these matters, we would be grateful if you could provide us with more details on the nature of these discussions and the extent to which you consider that these may set the agenda for future debate on the CAP Health Check.

21 February 2007

Letter from James Plaskitt MP to the Chairman

Following my Explanatory Memorandum on the above Communication you wrote on 21 February 2007. You asked for more detail on the nature of the Council discussions on the Communication.

As it is my colleague the Secretary of State for Environment, Food and Rural Affairs who leads on matters concerning the Agriculture Council, this letter relays the information provided by his Department.

The content of the European Commission’s Communication and draft Council Conclusions have been discussed at the Special Committee for Agriculture (SCA) and will be adopted at the Agriculture Council on 19–20 March. During discussions in the SCA the UK has been able to agree changes to the language of the Council Conclusions sufficient not to compromise UK policy objectives for the CAP, whilst acknowledging the position of other Member States. The Commission has been asked to examine further the employment situation in rural areas and to deliver an updated report focusing particularly on employment of younger people and women. Conclusions such as these are a relevant part of the policy background which will inform the CAP healthcheck next year, but they are, of course, just one element amongst a range of drivers and objectives. We do not think that these conclusions, as amended, would lead to any unhelpful constraints on the scope of future CAP reform.

13 March 2007

ENERGY EFFICIENCY LABELLING OF OFFICE EQUIPMENT (13574/06, 13672/06)

Letter from the Chairman to Ian Pearson MP, Minister for State for Climate Change and Environment,
Department for Environment, Food and Rural Affairs

At its meeting on 22 November 2006 Sub-Committee D considered your Explanatory Memorandum dated 24 October 2006 concerning proposals for a Regulation and a renewed EU-USA Agreement on this subject. The Sub-Committee is content to clear these proposals from scrutiny.

22 November 2006
ENVIRONMENTAL QUALITY STANDARDS IN WATER (11816/06)

Letter from the Chairman to Ian Pearson MP, Minister of State for Climate Change and Environment, Department for Environment, Food and Rural Affairs

I refer to your Explanatory Memorandum dated 3 October 2006 on this subject, which concerned a proposal for a Directive of the European Parliament and of the Council on Environmental Quality Standards (EQSs) in the field of water policy. Sub-Committee D (Environment and Agriculture) considered these proposals at its meetings on 25 October and 29 November.

The Sub-Committee sees merit in these Proposals. We have noted your comments on the need for more flexibility but we feel that the importance of this legislation for water environments across the European Union is such that there is a need for stringent measures. We have noted also that the concept of Transitional Areas of Exceedance (Article 3) appears to offer some room for manoeuvre in achieving good water quality status within a reasonable time-frame.

The Committee would however welcome further information from you in a number of areas. In particular, it is not clear to us where the costs and benefits of these proposals lie or what the cost—as distinct from environment or health—benefits would be. We would also like to know what are the priority substances referred to, especially those for which the UK currently does not have EQSs. More generally, the Committee would find it helpful to consider the proposals against the background of progress in implementing the Water Framework Directive rather than in isolation.

For these reasons we would wish to invite you to appear before us early in the New Year with a view to resolving some of these issues. We would wish also to take evidence from the Environment Agency. Our Clerk will be in touch with your office in order to seek a suitable date. In the meantime the Committee wishes to retain the Proposals under scrutiny.

29 November 2006

EU EMISSIONS TRADING SCHEME (EU ETS) (5055/06)

Letter from Ian Pearson MP, Minister of State for Climate Change and Environment, Department for Environment, Food and Rural Affairs

Thank you for your letter of 20 July 2006 concerning the success of Phase I of the EU Emissions Trading Scheme (EU ETS). You will recall that I promised to provide further analysis of the EU ETS and the first year results when they became available.

We published on 22 December 2006, the first of a series of summary sheet analyses of the first year’s emissions results. Defra will be publishing further summary analysis sheets in the coming weeks exploring the emissions results by sector as well as examining issues such as the carbon market, compliance and the results across the EU. These will be available on the Defra website: http://www.defra.gov.uk/environmentclimatechange/trading/eu/results/index.htm

In previous correspondence you were also interested in enforcement of the EU ETS and in particular the penalties imposed for non-compliance with the Scheme, (your letter of 9 March 2006). At the time of writing my response the regulators had not imposed any fines on non-compliant operators. Over 99% of operators surrender allowances and submitted verified emissions reports on time. However, following investigation into the circumstances surrounding non-compliance by a handful of operators, the Environment Agency, regulator for the Scheme in England and Wales, has levied fines against four companies.


18 January 2007

EUROPEAN EEL: RECOVERY OF STOCK (13139/05)

Letter from Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare, Department for Environment, Food and Rural Affairs to the Chairman

I thought it would be helpful to update you on the progress of the proposal for a Council Regulation establishing measures for the recovery of the stock of European eel.

As you are aware, it was felt that the proposed short term measure (a 50% closure of the eel fisheries) would disproportionately impact on UK eel fisheries. Subsequently, my officials have been seeking to negotiate a more holistic approach to the recovery plan which takes into account environmental factors affecting the decline of the European eel stock as well as fisheries pressures.

Unfortunately negotiations in Brussels resulted in an impasse. Due to the complexity of the eel lifecycle and the differing types and methods of eel exploitation across Europe, no agreement was reached in the Council Working Group on the current text. This lack of progress is unfortunate, given the parlous state of the European eel stock. The Finnish Presidency therefore referred the issue to the Committee of Permanent Representatives (Coreper) in November with a view to getting new instructions on how to take work forward.

Coreper felt that a more flexible instrument was needed to properly address this problem without placing the entire burden of reducing eel mortality on the eel fishing sector. Coreper concluded that talks should continue to seek a flexibly drafted regulation which would recognise the diversity of situations facing Member States and thus allow for decentralisation. Member States should be encouraged to tackle other crucial areas such as environmental problems and the impact of trade in elvers.

It is clear that to address the problem fully account has to be taken of environmental constraints on the survival, growth and subsequent escapement of European eel. Focussing primarily on fishing effort is bound to be inequitable given the diverse situations facing Member States, and may be ineffective. Broadening the scope of the proposed measures to address environmental aspects is therefore essential to the success of the eventual measures.

Local management plans are of paramount importance, to ensure that the very diverse conditions found in European waters can be effectively addressed. We doubt that any short-term measures directed principally at fishing effort would be equitable due to the diverse nature and complex lifecycle of the European eel, and furthermore, they would be highly disruptive, costly to enforce and likely to have little effect on eel stocks. We have therefore encouraged relevant UK authorities to take forward work on the development of management plans on a water catchment basis and I am pleased to say that this work is already well advanced. These plans will provide for flexible solutions to address catchment-specific problems and bring about the attainment of the Commissions 40% silver eel escapement target across the whole of the UK.

We understand that the German Presidency intends to give this issue a degree of priority, with a view to seeing the Regulation adopted by Council before the end of its term of office in June. In the first instance, however, the Commission will need to produce a revised proposal, reflecting Coreper’s conclusions. The UK will continue to engage actively and positively with Member States and the Commission to ensure that effective action is taken across Europe to address this very serious problem. We will be ready to implement catchment-specific management plans quickly, following agreement on a Community measure in the Council.

I will write again once the new proposal is brought forward.

11 January 2007

Letter from Ben Bradshaw MP to the Chairman

As you are aware, this dossier reached an impasse due to the divergence of views expressed during working group meetings last year. Subsequently, Coreper gave instruction on the way forward and the regulation has been discussed and negotiated in a new, more intensive period of working groups in February and March of this year. The German Presidency have now put this Regulation on the agenda of the April Council with a view to adopting it on April 16.

The UK has been pushing for measures to protect and enhance eels stocks for many years. It is important to recall that as long ago as 2001, the International Council for the Exploration of the Sea (ICES) Working Group on Eels (WGEEEL) concluded that the European eel stock remains outside safe biological limits and current fisheries are not sustainable and recommended that a recovery plan for the European eel stock is compiled and implemented as a matter of urgency. The UK has long acknowledged the poor state of the stock and has supported the need for a Community-wide rebuilding plan. We have consistently expressed our disappointment over the delay in implementing measures, noting that it was 2004 that the Council requested the Commission to come forward with a proposal for short-term measures to improve the conservation of the eel resource.

As drafted, the proposed measures will have some impact on the UK eel sector, particularly the glass eel industry, where the requirement to use a proportion of the glass eels for restocking, rather than export to Asia, is likely to change the dynamics of the industry, effecting profits, leading to a contraction of the industry.
Nevertheless, we are broadly content with the Regulation and we feel that it will go some way towards creating an environment in which the eel stock could recover from its parlous state. There is still some disagreement over the drafting of the regulation (eel fisheries are unique and differ for each Member States), however, the Presidency and Commission are pushing hard for political agreement in April and it is likely a compromise will be reached during Council discussions.

The German Presidency has now been pushing for this item to be concluded and there is little chance that they would be prepared to delay a vote on this item. Furthermore, it would be difficult for the UK to seek such a delay when we have been such strong advocates of urgent measures to be introduced. We continue to believe that it is important to take immediate action if eel stocks are to recover and the sector become sustainable.

In the circumstance, we did not consider it appropriate to seek to delay this item at Council and, subject to the final version meeting our requirements, intend to vote for the proposal on 16 April.

I very much regret that the proposals are likely to be adopted without prior scrutiny clearance. I am well aware that Parliamentary scrutiny is an essential part of our legislative process, and that overriding this process is a serious matter, and I do not do it lightly.

12 April 2007

Letter from Ben Bradshaw MP to the Chairman

Further to my letter of 12 April on the above-mentioned proposal, I am writing to update you on developments following the Agriculture and Fisheries Council on 16 April. As anticipated, the Presidency pushed to reach political agreement on this proposal at Council however, due to intransigence by those Member States, led by France and Spain, who wish there to be no provisions for restocking, a compromise could not be reached so it was not therefore put to the vote. The proposal will now return to Working Group and it is unlikely that it will return to Council until June 2007.

While I very much regret that no agreement could be reached at Council, I am nonetheless pleased that consideration of the dossier by your Committee can now be completed and that the remaining obstacles to agreement in Council can be overcome in time for this proposal to be adopted in June.

20 April 2007

EXPORTS AND SAFE STORAGE OF MERCURY (14629/06)

Letter from the Chairman to Lord Rooker, Minister of State for Sustainable Farming and Food, Department for Environment, Food and Rural Affairs

I refer to your Explanatory Memorandum dated 15 November 2006 on this subject, which was considered by Sub-Committee D at its meeting on 29 November 2006.

We are content to clear this proposal from scrutiny.

29 November 2006

FINANCIAL INSTRUMENT FOR THE ENVIRONMENT (LIFE + ) (13071/04)

Letter from Ian Pearson MP, Minister of State for Climate Change and Environment, Department for Environment, Food and Rural Affairs

I am writing to update you on the European Parliament’s second reading of the proposed Regulation on the Financial Instrument for the Environment (LIFE + ).

During the debate in plenary on 23 October 2006 the rapporteur presented a report containing 31 amendments to the Council’s Common Position. All amendments were adopted by a large majority together with an additional amendment asking the Commission to ensure that provisional measures were put into place to avoid a financing gap for current activities.

The main issue of contention with the Council is the delegation of administration of 80% of the funds to Member States. The European Parliament rejected this approach and wish the Commission to take the leading role in the instrument’s administration. Other important issues are the European Parliament’s wish to increase the overall budget by €50 million (£33.5 million) to €1.911 billion (£1.278 billion) and to increase the proportion of the budget allocated to nature and biodiversity from 40% to 55%. There are several minor amendments which are acceptable as written, or in principle, to both the Council and the Commission.
The Commission, Council and European Parliament will now enter into discussions in trialogue to make progress on the outstanding issues. At present no timetable has been set for these discussions.

I will, of course, inform the Committee once we have new lines for the negotiation.

21 November 2006

Letter from Ian Pearson MP to the Chairman

I am writing to update you on the conciliation process for the proposed Regulation on the Financial Instrument for the Environment (LIFE+).

Following informal discussions between the Presidency and the European Parliament a formal conciliation meeting took place on 27 March 2007 and agreement was reached on the LIFE+ Regulation.

The main points agreed which are different from the Council’s Common Position are:

— The overall budget is increased by €40 million to €1.894 billion (2004 prices). The European Parliament wanted an extra €50 million allocated to the programme but agreed to leaving €10 million in the margin for the budget heading.

— The Commission will now administer the programme instead of delegating 80% of the budget to Member States to administer through National Agencies.

— At least 78% of the budget shall be used for project action grants. The remaining 22% will be spent by the Commission on cross-cutting measures and the administration of the programme. This is essentially the same as the Common Position where 80% was to be delegated to Member States of which 2% was allowed towards the administration costs. The Commission will now use 2% of the budget for administration leaving 78% for project action grants.

— At least 50% of the budgetary resources dedicated to project action grants shall be allocated to support the conservation of nature and biodiversity. This is similar to the Common Position where 40% of the total budget was to be used for nature and biodiversity.

— The Commission shall endeavour to ensure that at least 15% of the budget for project action grants is allocated to transnational projects.

Overall, this was a good outcome for the UK with the final agreements on the main issues being within our negotiating lines.

26 April 2007

FISHERIES COUNCIL

Letter from Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare, Department for Environment, Food and Rural Affairs to the Chairman

I understand you have asked for an update on progress with our preparations for the December EU Fisheries Council. You are aware that we do not expect the formal Commission proposals for TACs and quotas and related controls to be published until early next month. In the meantime however, we have prepared the attached paper which summarises our key objectives in anticipation of what is likely to surface, which you may find useful.

27 November 2006

Annex A

Initial UK Position for the EU Fisheries TAC and Quota Regulation for 2007

Effort Management

Cod

1. In the light of continuing pessimism within ICES about the achievements of the cod recovery programme to date, the Commission will be undertaking a review of the implementing mechanism next year with a view to making it more effective—any necessary changes applying from 2008. In the meantime, they are not proposing any fundamental changes to the structure of the programme for 2007—although we expect
proposals for significant cuts in cod TACs and effort to ensure the existing momentum is not lost. We are not however anticipating that they will follow the ICES advice to the letter and place a moratorium on cod fishing—on the grounds that to do so would threaten the long-term viability of the fleets involved.

2. There is some limited good news in relation to stock recruitment. For the first time in some years there are signs of more juvenile cod in the North Sea, reflected in an ICES assessment which suggests that catches are likely to increase next year if the level of fishing effort remains unchanged. However, with fleets using smaller mesh nets to target species like sole and prawns not having reduced by much, it is likely that many of these fish will be caught (and increasingly discarded) before they can reach maturity.

3. The Commission believes that despite the forthcoming review, it is obliged by the cod recovery regulation to propose cuts in days for the 100mm + trawl sector (including the main UK whitefish fleet) because recovery targets have not been achieved. The Commissioner is particularly concerned that Member States may see the review as an opportunity to temporarily pause the recovery mechanism—to the ultimate detriment of the stock—and will therefore be looking to maintain momentum. Although we do not support the draconian cuts in TACs and effort the Commission appear to have in mind, we remain firmly committed to cod recovery and will need to underline this throughout the course of the negotiations.

4. In recent years, the UK’s position has been that our whitefish fleet have already met their particular target. The STECF effort figures, confirm the UK’s substantial (roughly 65%) cut in effort in the 100mm + mesh sector since 2000. Total effort by all North Sea fleets in the sector has been reduced by 47% over this period (the category now accounting for 48% of cod landings), but some countries—France, Germany and Norway have increased effort particularly in the predominantly saithe-based fishery to the west of the West of Scotland. This was previously considered to be largely cod-free, but the advice from STECF draws attention to the potential cumulative effect of such fisheries. We would therefore expect the Commission to focus their attention on this particular segment rather than the traditional whitefish fleet.

5. We would also be looking for proportionate action to be taken on the other gears capable of catching cod as a bycatch. The beam trawl and 70-99mm trawl sectors (the latter including the UK’s prawn fleet) are estimated to account for respectively 13% and 14% of cod landings. The beam trawl sector can demonstrate a reduction in effort of 25% since 2000. The equivalent figure for the smaller mesh demersal trawl fleet however, is a 51% increase (albeit from a relatively low base). Whilst there is increasing evidence that the association with cod in the prawn fishery is very small and localised, the increase in 70-99mm trawl effort inevitably means that there will be pressure for that fleet to play its part.

6. The prospective cuts in days at sea for beam trawlers, would affect a small number of UK vessels from the Channel ports of Shoreham, Newhaven and Brixham. The North Sea beam trawl fleet is overwhelmingly Dutch (including some Anglo-Dutch vessels in English East Coast Producer Organisations) and Belgian. Of much greater economic interest for the UK however is the prawn fleet.

7. Prawns are the single most valuable catch of the English North Sea fleet. It is even more important for the Scottish fleet, both in the North Sea and the West of Scotland (supporting amongst other things up to 1000 jobs in the processing sector). And it is most vital of all to the Northern Irish fleet, accounting for something close to 90% of their entire catch.

8. Although the 100mm + trawl fleet still catches twice as much as cod as any other sector, there is an increasing focus on the small mesh fisheries. This is partly because there is increasing evidence of the important contribution of discards to cod mortality. It is also because—the two main sectors—the beam trawlers and smaller mesh demersal trawlers—depend on a bycatch of other species including whitefish to supplement their income. It is the logical consequence of our argument that the UK whitefish fleet has delivered its part of the cod recovery deal, that any additional reductions should be targeted elsewhere. While overall cod by-catches by the smaller mesh demersal trawlers are low in percentage terms, given the large number of these vessels and a low cod stock, this still amounts to a significant contribution to cod mortality across the fleet, especially when allowance is made for estimated discards. (The position is broadly the same in relation to beam trawlers.) The Scottish Executive last year put forward—through the North Sea Regional Advisory Council—some proposals for a possible package involving some reduction in days, coupled with possible offsetting incentives for use of more selective gears within our prawn fleet (designed to reduce whitefish bycatch). We have since done a significant amount of further work on improving selectivity. Whilst therefore we accept the logic of a cut in “basic” 70-99mm trawl days, we will be looking to recoup some of that cut in return for the application of further technical measures to improve selectivity for cod, specifically in the prawn fishery. We have submitted reports of sea trials of more selective gear undertaken by our fisheries research laboratories for evaluation by STECF.
9. In the Irish Sea we are in the process of setting up a pilot scheme, jointly with the Irish Government and with fishing industry representatives from Ireland and the UK, to dramatically improve the available data on catches and discarding by involving fishermen in a scientifically controlled self-sampling scheme. The aim of this is to provide better data for the scientists to use in future stock assessments and to pilot ways of tackling discards. We shall want to seek a bonus in terms of additional days at sea (or a lesser cut) for individual vessels participating in this scheme. This would act as an incentive to vessels to take part in the scheme.

10. For the last couple of years, the Commission has been prepared to accept a spring spawning closure of the Celtic Sea to assist the recovery of the cod stock there, without requiring a fully-fledged effort control mechanism. The latest scientific advice suggests that this has proved inadequate and that the fishery should be closed. We anticipate the Commission will stop short of a full closure, but nonetheless propose extending the remit of the existing cod recovery plan to include the Celtic Sea.

**Western Channel Sole**

11. This is a very important part of the mixed fishery in south west England, particularly for the Devon beam trawl fleet. A Commission proposal for a recovery plan for this stock has been on the table since January 2004 and an interim days at sea scheme has been in place since 2005. There has been significant misreporting of UK catches in this fishery over a number of years, suggesting the stock is more robust than the science indicates. As well as introducing days at sea and tighter enforcement measures therefore, the Council agreed a large increase in the Total Allowable Catch in 2005 and a further increase in 2006, to put it at a level closer to that of real catches.

12. We are currently working with the industry on a long-term management plan for this stock (using the Commission framework), based on a target fishing mortality well below the current level, but above the very severe target originally proposed by the Commission. Our objective remains to avoid getting locked into an annual ratcheting downwards of the effort limits. This would have a disproportionate impact on the ability of this fleet to catch the wide range of other species it targets, many of them non-pressure stocks not covered by quotas eg cuttlefish.

**Main TAC Issues**

13. Our starting point should be that we would generally follow the science on the setting of TAC levels. However, there are likely to be a limited number of cases where (a) the scientific advice is sufficiently uncertain to allow for a range of possible outcomes and (b) there is a significant UK interest in seeking a particular outcome within that range:

**Prawns**

14. Prawn quota is tight in the Irish Sea and we were hoping to use the additional scientific data we now have to support a significant TAC increase of some 17–20%. This would put the stock on a par with those in the North Sea and West of Scotland (where quota increases of 32 and 39% respectively were achieved last year—the increase in the Irish Sea TAC was limited to 10% in the absence of equivalent data). Unfortunately, a difference of opinion this year between ICES scientists and those of STECF, over the appropriate use of the new data, has led to similar advice to last year from ICES; namely that effort in this fishery should not be allowed to increase. STECF has endorsed the assessment methodology agreed last year.

15. The concerns about the data from the TV camera surveys apply equally to the North Sea and West of Scotland, where the scientific advice might be interpreted as suggesting a TAC cut (on the basis that last year’s increase was unjustified). STECF’s endorsement of the assessment methodology suggests it should be possible to sustain roughly status quo TACs for the two stocks.

**Northern Sheff Monkfish**

16. At last December’s Council, it was agreed that the Commission would consider a possible in-year quota increase on the basis of advice from STECF, in the light of information provided by the UK on catches and effort in the fishery in the first quarter of 2006 (to supplement the data available for what is otherwise a poorly studied stock). However, although this data supported a 10% increase, STECF were not convinced that the stock would remain sustainable at this increased level of exploitation and no change was therefore made. The Commission were however sympathetic to our position, recognising that failure to achieve an enhancement to the quota would act as a disincentive for further industry co-operation in the science. We anticipate they
will propose an equivalent increase for 2007. The difficulty is that the ICES advice stems from the scientists’ lack of confidence in the landings data, as a result of assumed misreporting and in addition, all the signs are that the French remain opposed to a further TAC increase, essentially for market reasons. If the Commission express concern about the scope for increased effort, our aim would be to seek to reassure them that this is unlikely to occur, so as to avoid being held hostage by any French refusal to agree an effort cap mechanism.

**Elasmobranches**

17. The ICES advice is for zero catches for spurdog, porbeagle, thornback ray and skate to reflect the increasing threat to these slow maturing, low fecundity species. The UK supports action to protect them. However, skates and rays, and to an extent spurdog, tend to be taken as bycatch and a cut in the TACs is unlikely to deliver stock recovery on the basis that it will simply increase discards. We will however be exploring with the Commission a range of other more balanced management measures. In particular, given the absence of detailed scientific data on these stocks, the priority must be to obtain species specific information at EU level.

**Technical Issues**

18. There are a number of more detailed technical issues, which, while not key UK priorities, we should register with the Commission. These include:

- Management measures for deep water fixed net fisheries—where we are looking for some flexibility in the Commission’s proposals to allow certain fisheries with little or no impact on deep sea species to continue to operate, whilst not wishing to undermine the measures’ overall conservation objectives.
- Further increase in the North Sea whiting TAC—where we would be looking to use even more of the (otherwise unused) industrial fisheries allocation for human consumption purposes (having secured a switch of 2,050 tonnes this year).

**External Negotiations**

19. The external negotiations between the EU and third countries such as Norway, are of increasing importance to the UK fishing industry. They cover in particular, mackerel and key North Sea stocks such as cod, haddock, whiting and herring. In these negotiations we are pursuing the following key objectives:

- No reduction in the TAC for North Sea cod.
- The EU receives its full allocation of North Norway cod and that mackerel quota should not be offered to the Norwegians to pay for it.
- If the TAC for Arctic cod is reduced, we should look to increase our share of the Arctic haddock and saithe TACs to compensate.
- To achieve a level playing field with regard to the application of control measures in the EU and Norway.
- To obtain a modest increase in the TAC for North Sea haddock in line with the scientific advice and no reduction in the North Sea whiting TAC.
- To achieve a reduction in the amount of blue whiting that needs to be transferred to Norway as part of the deal.
- International agreement on a management regime for the Atlanto-Scandian herring fishery. Failing that, bilateral agreement with Norway (the major player) to limit catches.

**FISHERIES PARTNERSHIP AGREEMENT BETWEEN THE EC AND GREENLAND (15966/06)**

**Letter from the Chairman to Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare, Department for Environment, Food and Rural Affairs**

Sub-Committee D considered your Explanatory Memorandum on the above Proposal at its meeting on 13 December 2006.

We note that the EM does not give an indication of the allocation of fishing opportunities between the Member States, including those for United Kingdom vessels. Nor does your EM provide any information on how sustainable the proposed levels of fishing are for the marine environment. We would also like to know what
arrangements exist for monitoring and policing fishing in the Greenland EEZ. Given the urgency of adopting the Decision in order to avoid creating a legal vacuum, we are content to live scrutiny on the Proposal but we would welcome further information from you on the issues I have raised.

13 December 2006

Letter from Ben Bradshaw MP to the Chairman

Thank you for your letter of 13 December in which you informed me that, following consideration by Subcommittee D, the Lords Scrutiny Committee agreed to lift scrutiny on the proposal relating to the provisional application of the new EU/Greenland Fisheries Partnership Agreement.

You commented that the Explanatory Memorandum covering this proposal did not specify allocation of quotas between Member States. This is because at the time of preparing the EM this breakdown was not available. Since then, the December Agriculture and Fisheries Council has taken place at which Total Allowable Catches (TACs) and quotas were agreed for 2007, including quotas in Greenland waters. The attached Annex to this letter shows the allocation of all the fish stocks covered by the Agreement. However, you should note that the TACs and quotas regulation for 2007 has not yet been published in the Official Journal so these figures should be treated as provisional for the time being.

You also asked about measures for monitoring and policing fishing in the Greenland Exclusive Economic Zone. The fishing activities governed by this Agreement are subject to the laws and regulations in force in Greenland. The Greenland authorities are required to seek the observations of Community authorities on any amendments to their legislation prior to their entry into force unless urgent entry into force is justified. Greenland’s competent authorities are responsible for monitoring fishing activities. When the competent authorities observe that there has been a violation of Greenlandic law by a master of a Community vessel, notice must be sent as soon as possible to the European Commission and the flag Member State. The notice must contain information concerning the name of the vessel, register number, call signal and the names of the vessel owners and the master of the vessel. The notice must also contain a description of the circumstances leading to the violation and must specify any sanctions applied.

Two important Greenlandic Regulations which are applied are the Greenland Home Rule Executive Order on Fishing Bycatches and the Greenland Home Rule Executive Order on Surveillance of Off-Shore Fisheries. In addition, the Protocol to the Agreement has annexed to it detailed provisions on the conditions related to satellite tracking of fishing vessels. Satellite tracking must apply to all Community vessels when operating in Greenlandic waters. Community fishing vessels are tracked by their Flag State Monitoring Centre when operating in Greenlandic waters. It is prohibited for a Community vessel to switch off its satellite tracking devices when operating in Greenlandic waters. If a vessel is observed without having an operational satellite tracking device on board and without messages being communicated to the Greenland authorities, this vessel may be instructed to leave Greenlandic waters. Vessel owners are also required to forward entry and exit messages to the Greenland authorities (the control unit in the Directorate of Fisheries Greenland and Licence Control Authorities) when they enter and leave Greenlandic waters. Once a vessel has entered Greenlandic waters the Flag State Monitoring Centre in the Member State responsible for the vessel must notify the Greenlandic authorities of the vessel’s position at least every two hours. The EU Monitoring Centre must monitor progress by its vessel on an hourly basis.

15 January 2007

Annex A

EU/Greenland Fishing Opportunities for EU Vessels in 2007

<table>
<thead>
<tr>
<th>Species</th>
<th>Area</th>
<th>Member State</th>
<th>Member State’s Quotas (tonnes)</th>
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<tr>
<td>Snowcrab</td>
<td>NAFO 0 &amp; 1</td>
<td>Ireland</td>
<td>62</td>
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<td></td>
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<td>Spain</td>
<td>437</td>
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<td></td>
<td></td>
<td>EU</td>
<td>500</td>
</tr>
<tr>
<td>Cod (1)</td>
<td>V, XIV, NAFO 0 &amp; 1</td>
<td>Germany</td>
<td>818</td>
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<td></td>
<td></td>
<td>UK</td>
<td>182</td>
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<tr>
<td></td>
<td></td>
<td>EU</td>
<td>1,000</td>
</tr>
<tr>
<td>Species</td>
<td>Area</td>
<td>Member State</td>
<td>Member State’s Quotas (tonnes)</td>
</tr>
<tr>
<td>-------------------------</td>
<td>--------------</td>
<td>----------------------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>Atlantic halibut (2)</td>
<td>V&amp;XIV</td>
<td>Portugal</td>
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<td></td>
<td></td>
<td>EU</td>
<td>1,200 (3)</td>
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<td>EU</td>
<td>200 (4)</td>
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<td>Capelin</td>
<td>V&amp;XIV</td>
<td>EU</td>
<td>0</td>
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<tr>
<td>Northern prawn</td>
<td>V&amp;XIV</td>
<td>Denmark</td>
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<tr>
<td></td>
<td></td>
<td>France</td>
<td>1,300</td>
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<tr>
<td></td>
<td></td>
<td>EU</td>
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<td>NAFO 0 &amp; 1</td>
<td>Denmark</td>
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<td></td>
<td></td>
<td>France</td>
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<td>Greenland halibut</td>
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<td>Germany</td>
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<td></td>
<td>EU</td>
<td>7,500 (6)</td>
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<td>Greenland halibut</td>
<td>NAFO 0 &amp; 1</td>
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<td></td>
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<td>By-catches (10)</td>
<td>NAFO 0 &amp; 1</td>
<td>EU</td>
<td>2,600 (11)</td>
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</table>

Footnotes

(1) South of 63 degrees N: May only be fished as from 1 June. In the period 1 June until 31 October the quota may only be fished by long liners. As from 1 October both trawl and long liners may be used.
(2) To be fished by no more than 6 Community demersal long liners targeting Atlantic halibut Catches of associated species to be counted against this quota. Further provisions may be introduced during 2007 on the basis of a joint decision taken in the framework of the Joint Committee.
(3) Of which 200 tonnes to be fished only with long lines allocated to Norway.
(4) Allocated to Norway, to be fished only with long lines.
(5) Of which 3250 tonnes are allocated to Norway and 1150 tonnes to the Faroe Islands.
(6) Of which 800 tonnes are allocated to Norway and 75 tonnes to the Faroe Islands.
(7) Of which 800 tonnes are allocated to Norway and 75 tonnes to the Faroe Islands.
(8) May only be fished by pelagic trawl. May be fished East or West. The quota may be taken in the NEAFC Regulatory Area on the condition that Greenlandic reporting conditions are fulfilled.
(9) 3,500 tonnes to be fished with pelagic trawl are allocated to Norway and 200 tonnes are allocated to the Faroe Islands.
(10) Bycatches are defined as any catches of species not covered by the vessel’s target species indicated on the licence. May be fished East or West.
(11) Of which 120 tonnes of roundnose grenadier are allocated to Norway.

**FISHERIES PARTNERSHIP AGREEMENT BETWEEN THE EC AND THE REPUBLIC OF MADAGASCAR (5736/07, 5737/07)**

**Letter from the Chairman to Ben Bradshaw MP, Minister of State for Local Environment, Marine and Animal Welfare, Department for Environment, Food and Rural Affairs**

Your Explanatory Memorandum (EM) on the above Proposals was considered by Sub-Committee D at its meeting of 28 March 2007.
We note that the Fisheries Partnership Agreement is being re-negotiated and we understand that you will submit a Supplementary EM upon conclusion of the revised Agreement.

In the meantime, we would appreciate information from you on the extent of the Community’s knowledge of fisheries in Madagascan waters and how the Agreement is likely to function in practice.

We will release these Proposals from scrutiny on the understanding that the revised Agreement will be submitted to us upon completion of negotiations.

29 March 2007

Letter from Ben Bradshaw MP to the Chairman

Thank you for your letter of 29 March asking for information on the extent of the Community’s knowledge of fisheries in Madagascan waters. Before negotiating any Fisheries Partnership Agreement, the European Commission will commission an independent consultant to carry out an analysis of the fisheries in the 3rd Country’s waters. This includes analysis of the biological situation of the stocks, current utilisation of resources, management of the fisheries, and existing levels of control and enforcement. This study is referred to in paragraph 3 of the Explanatory Memorandum as the “ex-post and ex-ante evaluation carried out by independent experts”. The report on the Madagascar agreement is available in French only.

You also asked how the agreement is likely to function in practice and I understand that by this you refer to how control and compliance of EU vessels is ensured. In this case I would refer you to the Annex of the Agreement. Chapter 3 onwards stipulates the conditions of reporting requirements, licensing, observer schemes and satellite monitoring. Employment of locals is also covered here. Ultimately an EU vessel not complying with the rules would have its Madagascan licence revoked. The Member State responsible would be informed and would be expected to investigate the vessel concerned.

If your Committee would find it helpful to have a general briefing with my officials on how Fisheries Partnership Agreements work I would be happy to arrange this.

I will provide the Committee with further information on the revised Agreement once the proposal is made by the European Commission.

24 April 2007

FISHERIES: AMENDMENTS TO TOTAL ALLOWABLE CATCHES FOR 2006 (12328/06)

Letter from the Chairman to Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare, Department for Environment, Food and Rural Affairs

Sub-Committee D considered your Explanatory Memorandum dated 4 October at its meeting on 18 October 2006.

The Committee is content to clear the proposal but wishes to be kept informed of the progress of your discussions with the Commission on this subject.

19 October 2006

FISHERIES; RIGHTS BASED MANAGEMENT TOOLS (6889/07)

Letter from the Chairman to Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum on the above Communication was examined by Sub-Committee D at its meeting of 28 March 2007.

We consider this subject of great interest and we would therefore be grateful if you could send us more information on the progress of the UK’s Quota Management Change Programme, to which you refer. It would be interesting to receive your views on how this will feed in to the Commission’s consultation process.

We are content to release the Communication from scrutiny and look forward to your comments on the points raised in this letter.

29 March 2007
Letter from Ben Bradshaw MP to the Chairman

Thank you for your letter of 29 March about the Explanatory Memorandum on the Commission communication on rights based management tools in fisheries.

In your letter you asked two questions, firstly what progress has been made on the UK Quota Management Change Programme (QMCP), and secondly how this will feed into the Commission’s consultation process.

In answer to your first point, Fisheries Administrations are currently working on a final draft QMCP consultation document which sets out proposals to improve quota management in the UK. We expect to go out to consultation on those proposals in the second half of 2007, with a view to introducing any changes (possibly on a phased basis) from next year.

With regard to your second point, the work of the QMCP has looked at how access to quota is managed both in other Member States and countries worldwide. This work has directly influenced the proposals in the draft consultation document, and will inform our returns to the Commission when the consultation process on their Communication is launched.

23 April 2007

FISHERIES: TOTAL ALLOWABLE CATCHES AND QUOTAS FOR CERTAIN DEEP-SEA SPECIES
(13421/06)

Letter from Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare, Department for Environment, Food and Rural Affairs

I am writing to inform you of an issue which is to come before the Agriculture and Fisheries Council on 20–21 November. The item concerns the fixing of TACs (Total Allowable Catches) and quotas for deep water species for 2007 and 2008.

An Explanatory Memorandum (13421/06) was prepared and submitted on 6 November 2006 and was sifted to Sub-Committee D on 7 November.

TACs and quotas for deep sea species were first established in 2002 for 2003 and 2004. They were extended for 2005 and 2006 and are intended to be extended for 2007 and 2008. For 2005 and 2006 the provisions required a 10% cut in effort compared to 2003 and 2004.

ICES has recommended at least 30% reductions in TACs for many species as well is the closure of some fisheries such as orange roughy and blue ling. The Commission intends to follow the scientific recommendations basing the forthcoming TACs on reported landings in recent years.

Most deep sea species can only sustain low rates of exploitation. Fishing on such species should be permitted only when they are accompanied by programmes to collect data and should expand very slowly until reliable assessments indicate that increased harvests are sustainable.

The advice from ICES makes for very grim reading. It suggests that almost all deepwater stocks, are overexploited and that effort needs to be cut back substantially. For the stocks of main UK interest:

Blue Ling—There should be no directed fisheries and catches should be minimised in mixed fisheries to the lowest possible level. Closed areas to protect spawning aggregations should be maintained and expanded where appropriate.

Tusk—ICES recommends a 30% cut in catches.

Black Scabbardfish—Reduction in fishing effort to baseline levels (1990–96) (−34.5% in 2007 and a further reduction of 50.7% in 2008).

The Commission has accepted the ICES recommendations in full and is prepared to act on this advice. It is proposing to cut TACs on the basis of 2005 landings rather than the actual set TAC. The Commission argues that this is because the uptake of a number of TACs is so low that even a 30% cut in the TAC wouldn’t actually cut fishing effort. This has lead to most cuts being very significant, with TACs being reduced by more than 33%.

The UK has a relatively small, but significant stake in deep sea fisheries. The main quota holders are France and Spain. We agree with the Commission that urgent action is needed to conserve these slow growing, late maturing fish, most stocks of which are severely depleted. The UK fully supports the Commission proposals on this issue, subject to points where the proposals are technically flawed which are being pursued bilaterally with the Commission.
I attach very great importance to the work of the Committee, and I very much regret that this proposal is going to Council without prior scrutiny clearance from the Committee. It is important to note that there was a very short space of time between receiving the proposal and it being discussed in Council. There was also some difficulty getting agreement on a UK position with the Devolved Administrations. I am sure that you will appreciate that the balance between taking appropriate action in the light of dismal scientific advice and the socio-economic effects of doing so is not an easy one to strike. I discussed this issue twice with my Scottish counterpart and only through arduous debate have we come to agreement.

Although there were reasons for it in this case, overriding scrutiny is not a step I take lightly. I hope the Committee will understand why we have taken this course on this occasion and will accept my apologies for any appearance of discourtesy to the Committee.

16 November 2006

Letter from the Chairman to Ben Bradshaw MP

At its meeting on 22 November 2006 Sub-Committee D considered your Explanatory Memorandum on the above Proposal and your letter of 16 November explaining the need to over-ride scrutiny in the Council of 20–21 November.

We understand the use of the scrutiny over-ride on this occasion as, due to Prorogation of Parliament, we were unable to consider your EM before Council. It should be noted, though, that the original Commission Proposal was published on 28 September, leaving ample time for your EM to be deposited with Parliament before Prorogation. We do fully appreciate the pressures of time and the importance of securing agreement at the last Council meeting but we trust that, wherever possible, you will endeavour in future to ensure that EMs do reach us in time for us to consider them before adoption in Council.

On the substance of the Proposal, the Committee is content with the approach pursued by Defra and adopted by the Council. We trust that a similarly sustainable approach will be taken in the preparation for, and during, the December Council on the remaining TACs and Quotas for 2007.

22 November 2006

FISHING CAPACITY AND FISHING OPPORTUNITIES: ACHIEVING A SUSTAINABLE BALANCE (5288/07)

Letter from the Chairman to Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum on the above report was considered by Sub-Committee D at its meeting of 28 February 2007.

The achievement of a sustainable balance between fishing capacity and fishing opportunities is crucial to the success of the Common Fisheries Policy. For this reason we were disturbed to note that the UK was the only Member State which failed to submit its annual report on this matter to the European Commission and surprised that this was not mentioned in the Explanatory Memorandum.

We share the Commission’s view that a consistent approach across Member States to reporting on the pursuit of a sustainable balance is crucial to identifying further policy work that may be required. We would hope that the Government would also agree that a consistent approach across the Community is necessary in order to achieve the objectives of this common policy.

Though the Committee is content to clear the proposal from scrutiny, we would be grateful for confirmation that the Government will play an active part in the future in fulfilling its reporting obligations within the framework of the Common Fisheries Policy and that any failure to do so will be acknowledged and explained in relevant Explanatory Memoranda.

28 February 2007

Letter from Ben Bradshaw MP to the Chairman

Thank you for your letter of 28 February. My apologies for the omission in the Explanatory Memorandum. The problems seen in 2006 were exceptional, and related to the fact that the work to produce the report, along with other reporting and analytical responsibilities is carried out by a small team within the Marine Fisheries Agency. The detailed vessel-by-vessel information on changes to the UK fishing fleet during 2005 that formed a significant part of the EU report, and which is the information used to demonstrate that the UK fishing fleet remains within its overall limits in terms of total tonnage and total engine power, were submitted by the
required reporting deadlines in March 2006. However, the pressure of other work on the unit at that time of year as well as the absence of a key analyst due to long term illness led to the non-submission of the accompanying report on the balance of fishing capacity and fishing opportunities. The following measures have been taken to ensure this does not happen again in 2007 and in subsequent years.

Detailed information on the changes in the UK fishing fleet during 2006 has already been submitted to the Commission. Work has already started on preparing the content of the accompanying report. An initial version based on existing format and content will be completed by 31 March 2007. During April, the report’s content will be finalised, incorporating any analysis that may be required as a result of changes to the format and content of the report that come out of discussions the Commission are currently engaged in with Member States. The report will be submitted by the due date of 30 April 2007.

Responsibilities for this work are also being divided amongst the staff in the statistics team to ensure that in future years the reporting deadlines for this report will continue to be met. In addition, the Explanatory Memoranda produced in relation to future versions of this annual report from the Commission will make a specific mention of the reporting of information by the UK.

I hope that this information is sufficient to reassure you on this matter.

27 March 2007

FLOOD MANAGEMENT (5540/06)

Letter from Ian Pearson MP, Minister of State for Climate Change & Environment, Department for Environment, Food and Rural Affairs

I am writing to update the committee on this dossier. The Council’s formal Common Position was adopted on 23 November 2006. This reflects the political agreement reached at the Environment Council on 27 June 2006, with unanimous support. The UK was able to support the compromise at Council on the basis that the negotiations had produced a significantly more flexible Directive than the Commission’s original proposals. As anticipated, the compromise reached was very much as described in Option 4 of the partial Regulatory Impact Assessment, submitted with the Supplementary Explanatory Memorandum 5540/06 of 2 June 2006.

Adoption of the Common Position means that the Directive can now proceed to the next stage of the co-decision process, the second reading in the European Parliament. Transmission to the European Parliament, triggering the fixed timescale for the second reading will take place during December. We can therefore expect the European Parliament’s second reading to be completed by late April at latest. Adoption in plenary thought likely to be on 28 March. As normal, the possibility of a second reading agreement between the institutions will be explored by the incoming German Presidency of the Council. The UK will be concerned to preserve as far as possible the flexibilities agreed by the Council in any second reading deal, or at any possible subsequent conciliation if no agreement is reached.

20 December 2006

Letter from Ian Pearson MP to the Chairman

I am writing to further update the Committee on this dossier. The Council of Ministers’ formal Common Position was transmitted to the European Parliament on 18 January 2007 triggering the beginning of the second reading. Amendments to the Common Position were voted on by the Parliament’s Committee on Environment, Health and Food Safety on 27 February. A plenary session vote on the second reading is expected on or about the 24 April. In the meantime, negotiations will take place with a view to reaching a second reading deal between the Council and the European Parliament, and a series of meeting has been scheduled for that purpose. There are reasonable prospects for a deal, although some of the amendments as they stand would not be acceptable to the UK or to the Council as a whole.

A consolidated list of the amendments agreed by the Environment Committee has been produced, and runs to 42 items. These have been discussed between Member States at official level, and the UK is able to fully support the approach proposed by the German Presidency in responding to them.

The rapporteur (Richard Seeber, Austria) has highlighted nine topics within the amendments in his draft recommendation. He is keen that amendments concerning the effects of climate change should be incorporated, especially in relation to assessing future flood risk in the preliminary risk assessments.

The UK would be happy to see further emphasis on taking into account the effects of climate change, and although some Member States have concerns about the detailed wording, it should not prove too difficult to find mutually acceptable text.
Mr Seeber also wishes to bring forward a number of deadlines in the Directive, relating to the completion of the Preliminary Risk Assessments (from 2012 to 2010), and to the cutoff date for completing work which is to be regarded as “existing work”, to be used on a transitional basis (from 2010 to 2009). On the Preliminary Risk Assessments (PRAs), it is hard to see the benefit in reducing the timescale for completion, from three years after the Directive is brought into force, to one year after. The PRAs are essentially a procedural stage, and there would be no change to the dates for preparation of flood maps and flood risk management plans. The rapporteur’s stated motivation is that he wishes to “ensure a fast moving procedure”. The Council, including the UK, has a strong preference for retaining the timing set out in the Common Position. These timing issues are likely to prove difficult to resolve between the institutions.

Next rapporteur highlights amendments applying the recently agreed “comitology with scrutiny” procedure to the Directive (ie involving the European Parliament in agreeing implementing measures). There is disagreement over the scope of the measures to which this should be applied—the Commission and Council do not believe that specifying the technical formats for the transmission of data by Member States to the Commission should go through this more cumbersome procedure.

There significant amendments concerning the degree of integration between this Directive and the Water Framework Directive (WFD). It is likely that compromise can be found on strengthening the requirement to co-ordinate work on the two Directives. The UK supports full co-ordination between the two, but believes it is important to recognise that the processes and stakeholders for flood risk management are not identical to those for water quality. Amendments concerning the integration of flood risk management plans with river basin management plans under the WFD, and of public consultations under the two Directives, may prove difficult areas on which to reach agreement.

Concerning the recognition of the importance of retention areas, the integration of flood management issues into other policy areas, and the solidarity principle (ie avoiding actions that damage neighbours), it should be possible to find acceptable compromise wording that takes in the thrust of the amendments.

On the right to use existing work, the Environment Committee has approved amendments that we see as mutually contradictory. One amendment would permit the indefinite use of existing work that provides comparable protection against flooding to the Directive. The basic premise of this appears very sensible, emphasising public protection as the standard to be met. However, its indefinite timescale is not compatible with Article 13 of the Common Position, which allows the use of existing work only transitionally up to 2015, during the first phase of the Directive. Another amendment pulls in the opposite direction, effectively eliminating any protection for existing work used transitionally, by requiring that it should be fully aligned to the detail of the Directive, as well as bringing forward the cutoff date for completing it. Clearly accepting both amendments would not produce a workable outcome, and some kind of compromise—I hope at least preserving the degree of flexibility found in the Common Position—will be needed.

Finally, the rapporteur refers to an amendment requiring an assessment of the economic and environmental effectiveness of existing flood defences. This is unlikely to be acceptable to the Council in its current form.

Interestingly, the rapporteur does not highlight another group of amendments which are of very high concern to the UK. These add in further detail, to be included in the PRAs and the flood risk and hazard maps. One amendment would require that high probability (ie frequent) floods should be mapped; another would require mapping all potential sources of pollution, whether diffuse or from point sources. These are proposals that the UK successfully argued against in the Council at first reading, and if adopted would give rise to significant costs, as the partial RIA submitted last June set out. While compromise wording may be found on some of the less significant amendments (eg around some of the detail in the PRAs), it would be extremely difficult for the UK to accept such mandatory additions the mapping requirements of the Directive. The Council collectively adheres firmly to the Common Position on these points, and the German Presidency will argue the Council’s case accordingly.

It may be of interest to the Committee that some 62 amendments were originally submitted. My officials have made a sustained effort to brief MEPs on the issues from a UK perspective, including through the organisation of a seminar on flood policy in the European Parliament, with speakers from both Defra and the Environment Agency. One of our particular points was that the provisions of the Directive are not well-suited to the management of sewerage floods, important though we believe them to be. It is very welcome that an amendment removing the flexibility to exclude sewerage floods from the scope of the Directive was amongst those rejected by the Environment Committee.

23 March 2007
GENETICALLY MODIFIED MAIZE (13764/06, 13767/06)

Letter from the Chairman to Ian Pearson MP, Minister of State for Climate Change & Environment, Department for Environment, Food and Rural Affairs

At its meeting on 22 November 2006 Sub-Committee D considered your Explanatory Memorandum dated 24 October 2006.

We have noted that this proposal involves the use of the comitology procedure, about which we have expressed some misgivings in the past in relation to proposals concerning the marketing and use of GM crops. We have noted your predecessor’s letter of 3 July 2005, which pointed out that the UK is required to abide by the comitology rules, that approval is only granted if the crop in question is considered to be safe for both humans and the environment and that your Department would in future endeavour to notify us of proposals in this area in time for considered scrutiny.

Though our misgivings of the procedure remain, we are content to clear this proposal from scrutiny and would be grateful if you would keep us informed in good time of other similar proposals.

22 November 2006

GENETICALLY MODIFIED MAIZE: USE AND SALE IN HUNGARY AND GENETICALLY MODIFIED CARNATIONS: PLACEMENT ON THE MARKET (15786/06)

Letter from the Chairman to Ian Pearson MP, Minister of State for Climate Change & Environment, Department for Environment, Food and Rural Affairs

At its meeting on 22 November 2006 Sub-Committee D considered your Explanatory Memorandum dated 7 November 2006 on the above subjects.

We feel assured given the significant level of assessment undertaken that neither Proposal represents a threat to human health or the environment. Nevertheless, we do continue to take the matter of genetically modified products very seriously and we would ask that, when submitting EMs on similar proposals in the future, you provide information on why other Member States may have particular objections.

We will therefore release both of the proposals from scrutiny, but we would be grateful if you could let us know the final outcome of discussions.

29 November 2006

Letter from Ian Pearson MP to the Chairman

Thank you for your letter of 29 November regarding the Explanatory Memoranda on the above two proposals. You cleared these proposals from scrutiny but asked to be informed of the final outcome of discussions.

These two proposals were both voted on at Environment Council on 20 February. No qualified majority was reached either for or against the GM carnation so the Commission will now issue a consent in line with its scientific assessment. This is the agreed procedure laid down in the Comitology procedures.

In relation to the proposal to lift the ban on the use and sale of GM maize MON 810 in Hungary a qualified majority against the proposal was reached. The UK voted in favour of the proposed Council Decision based on the opinions of various scientific bodies (including the European Food Safety Authority and the UK’s Advisory Committee on Releases to the Environment) which have concluded that there is no new relevant scientific evidence in support of the safeguard action. Most other Member States have again voted along political lines, rather than on the basis of sound law or science. The safeguard action will, therefore, stay in place. This is the second time that the Council has voted against lifting safeguard actions taken by other Member States. Such actions call into question the credibility of the scientific basis of the EU GMO regulatory system.

5 March 2007
GENETICALLY MODIFIED OILSEED RAPE (11640/06)

Letter from Ian Pearson MP, Minister of State for Climate Change & Environment, Department for Environment, Food and Rural Affairs

I am writing to inform you that a vote was taken on the above proposal to approve the placing on the market of a GM oilseed rape product (Ms8, Rf3 and Ms8 x Rf3) at the Agriculture and Fisheries Council on 18 September.

The proposal is part of the routine process for dealing with applications to place GM products on the market. As agreed in July last year an Explanatory Memorandum was submitted on 11 January 2006 following discussion at the official level 2001/18 Regulatory Committee (previously we have waited until the issuing of the final proposal for the consideration of Council before providing you with an Explanatory Memorandum). In addition to this EM an evidence session was held by Sub Committee D on 19 April 2006 although your Committee still has not yet cleared this dossier. The UK were asked to take a position on the dossier at the Agriculture and Fisheries Council on 18 September. The UK voted in favour of the proposal as agreed by Cabinet Committee correspondence. No qualified majority was reached though and the proposal will now return to the Commission for a Decision in line with the scientific advice from EFSA. In the circumstances, it is clearly unfortunate that scrutiny procedures could not be completed but I wish to inform the Committee that the Government has decided to proceed.

4 October 2006

GENETICALLY MODIFIED POTATO PRODUCT

Letter from the Chairman to Ian Pearson MP, Minister of State for Climate Change & Environment, Department for Environment, Food and Rural Affairs

Sub-Committee D considered your EM on the above Proposal at its meeting of 7 January 2007.

We feel assured given the significant level of assessment undertaken that the Proposal does not represent a threat to human health or the environment.

We will therefore clear the proposal from scrutiny, but we would be grateful if you could let us know the final outcome of discussions, particularly as the Council Proposal is not yet available.

7 February 2007

GROUNDWATER POLLUTION (12985/03)

Letter from Ian Pearson MP, Minister of State for Climate Change & Environment, Department for Environment, Food and Rural Affairs

I last wrote to you on 4 August 2006 to update you on the above proposal. I am writing again to inform you that agreement was reached on Tuesday 17 October in Conciliation between the European Parliament, Council and Commission.

I do not yet have a text but I understand that the agreement is a good one for the UK. It will ensure a flexible, risk-based directive which will protect groundwater in a cost-effective way and will avoid the introduction of conflicts with the Nitrates Directive and the Water Framework Directive. In particular, it secures the elements of the text agreed in Council in June 2005 which were of most importance to the UK, namely:

— risk-based criteria for assessing groundwater chemical status, including standards for nitrates and pesticides from EU directives and for other substances set by Member States;

— an assessment of groundwater chemical status where exceedances trigger investigation rather than automatic failure of good status;

— reversal of environmentally significant pollution trends based on appropriate monitoring, flexible triggers for action, and realistic timescales;

— prevention or limitation of inputs of pollutants from diffuse and point sources, providing for exemptions in relation to disproportionate costs, technical feasibility and circumstances beyond Member States’ control,

Whilst avoiding the most problematic of the European Parliament’s Second Reading amendments—for instance, ones which would have introduced impossible new objectives, and (conversely) ones which would have created extremely large loopholes in groundwater protection.

I shall write to you again when a text is available and when the full Regulatory Impact Assessment has been produced. As always, if it would be useful in the meantime to discuss any of the issues informally with Defra officials, they should be happy to attend at the Committee’s convenience.

2 November 2006

**Letter from Ian Pearson MP to the Chairman**

Further to my letter of 2 November on the above, I attach a provisional draft text which has been published following Conciliation (not printed). The draft is provisional since it is still subject to legal and linguistic scrutiny. However it is consistent with my understanding of the agreement between the European Parliament and Environment Council, as outlined in my previous letter. Although the precise timetable is not yet clear, there is a possibility that the proposal will go forward for formal adoption in December.

The UK Regulatory Impact Assessment is currently being updated to reflect the new text. I will send you a copy as soon as it is available.

In the meantime, if you feel it would be helpful to discuss any of the issues informally with Defra officials, they should be happy to attend at the Committee’s convenience.

16 November 2006

**Letter from Ian Pearson MP to the Chairman**

Further to my letter of 16 November on the above, I attach a text which has been formally communicated to Member States following Conciliation (not printed). Member States will be invited to adopt this text at the 11 December Transport, Telecommunications and Energy Council meeting.

The formal text does not contain any substantive differences to the provisional post-conciliation text which I sent you, except for clarification that the time period for implementation will be two years following entry into force of the directive.

If it would be helpful for the Committee to discuss any of the issues informally with Defra officials either before or after adoption of the text, they should be happy to attend at the Committee’s convenience.

30 November 2006

**Letter from the Chairman to Ian Pearson MP**

Your letters of 2 November 2006 and 16 November 2006 regarding the Conciliation Agreement reached on the above Proposal were considered by Sub-Committee D at its meeting of 6 December.

We are content with the approach adopted by the Council and European Parliament and we are therefore releasing the Proposal from scrutiny.

I have already written to you (29 November 2006)\(^{10}\) about our concerns regarding the cost-effective and environmentally sound implementation of the Water Framework Directive as a whole. We therefore look forward to receiving the revised Regulatory Impact Assessment for the Groundwater Directive at the earliest opportunity.

6 December 2006

**IMPORT QUOTAS OF HIGH QUALITY BEEF (12361/06)**

**Letter from Lord Rooker, Minister of State for Sustainable Farming and Food, Department for Environment, Food and Rural Affairs to the Chairman**

I am writing to inform you of an issue which is to come before the Economic and Financial Affairs Council on 10 October. This concerns a proposal for a Council Regulation to modify the definition for certain import quotas of high quality beef.

An Explanatory Memorandum was prepared and submitted on 20 September, however due to recess it will not clear scrutiny ahead of the vote in Council on 10 October.

\(^{10}\) Refer to 11816/06 Environmental Quality Standards in water.
This proposal will provide the Commission with a Legal basis on which they may amend the current definitions of high quality beef (imported from Argentina, Uruguay and Brazil under Regulation 936/97) and will make the quotas covered by this Regulation country specific. This is intended to improve the Commission’s audit and verification of the products imported under these quotas.

It is unfortunate there has not been sufficient time for scrutiny to be completed for Council but I wish to inform your Committee that this proposal is not contentious, does not alter in any way the current workings of the quota allocations for any of the above-mentioned countries, and did not raise any discussion at the Special Committee for Agriculture on 25 September. As such it is to go to Council on 10 October as an A Point.

9 October 2006

INFRASTRUCTURE FOR SPATIAL INFORMATION IN THE COMMUNITY (INSPIRE) (11781/04)

Letter from Ian Pearson MP, Minister of State for Climate Change & Environment, Department for Environment Food and Rural Affairs to the Chairman

Further to my letter of 5 July 2006 regarding the above-mentioned dossier, I am writing to inform your Committee of the current position on this dossier.

INSPIRE is an initiative to create a European Spatial Data Infrastructure by improving the interoperability of spatial information across the European Union at local, regional, national and trans-national level. In doing so it aims to facilitate improvements in the sharing of spatial information between public authorities and provide improved public access. Environmental information will be the first theme to be covered by INSPIRE, but it is intended that INSPIRE will eventually be extended to cover other themes such as agriculture and transport.

INSPIRE entered conciliation at the end of September, during where there were a number of informal trialogues between the Commission, Council and the European Parliament (EP), as they worked towards an agreement.

Unresolved issues were considered by the Conciliation Committee, which was convened on 21 November. The outstanding amendments, as proposed by the EP, would have severely damaged essential UK defence interests and the financial sustainability of UK Trading Funds, imposing additional costs of up to £1 billion per year.

The UK’s key priorities in conciliation were to ensure:

— Public authorities are able to license and require payment for use of data;
— Protection of national defence interest; and
— The Commission undertakes a robust cost/benefit and feasibility analysis for each of the implementing rules.

The Conciliation Committee was able to resolve the outstanding issues and attain agreement, which secured the UK’s objectives. In relation to cost benefit analysis, whilst it is only explicitly mentioned with respect to the implementing rules on interoperability and harmonisation, the agreed text includes several additional points and provisions that reduce the possibility of significantly increased costs to data providers.

A consolidated text will be prepared and submitted for a formal vote to the Council of Ministers and the EP Plenary. Assuming the text is ratified, as expected, the Directive will come into force early in 2007 with transposition required by 2009.

Detailed implementing rules (IRs) will accompany the Directive and these will be decided by Comitology. They will be adopted between 2008 and 2012 and come into force between 2010 and 2019.

Over the next few months Defra will continue to liaise with Other Government Departments and the Devolved Administrations to consider the UK’s approach to transposition and implementation of the Directive.

12 December 2006

LIMITING GLOBAL CLIMATE CHANGE (5422/07)

Letter from the Chairman to Ian Pearson MP, Minister of State for Climate Change and the Environment, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum on the above Communication was considered by Sub-Committee D at its meeting of 14 March 2007.

We are supportive of the thrust of the Commission’s Communication. The greatest challenge arising from the Communication is the need to gain agreement at the global level. Such agreement is crucial both for the global environment and to ensure that the EU is not placed at a commercial disadvantage in relation to third countries.

We look forward to looking in depth at the various linked initiatives as they come forward for scrutiny.

In the meantime, we are content to release the Communication from scrutiny.

19 March 2007

MANAGEMENT OF DEEP SEA FISH STOCKS (5881/07)

Letter from the Chairman to Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum on the above Communication was considered by Sub-Committee D at its meeting of 21 March 2007.

We are pleased to note that the Government agrees with the Commission’s sobering analysis of the management regime in place for deep sea fish stocks. The analysis suggests that action is urgently required if further stock depletion is to be avoided. We would suggest that action ought to be taken before the current Regulation ends in December 2008.

We are content to clear the Communication from scrutiny but we would be grateful for an update from you on what the Commission has in mind for future action once you have had an opportunity to raise this with the Commission.

26 March 2007

Letter from Ben Bradshaw MP to the Chairman

Thank you for your letter of 26 March about the Commission’s Communication on deep sea fish stocks. You suggested that action should be taken before the current Regulation ends in December 2008. The Commission has not yet announced how it plans to act on the conclusions in their recommendation and the Presidency have not tabled the document for discussion in the internal Fisheries Group. However, the Communication has been discussed briefly in the fisheries management committee and Member States have been asked to comment on any possible misreporting of catches.

I will, of course, let you know if any further information emerges.

30 April 2007

MANAGEMENT OF SPENT NUCLEAR FUEL AND RADIOACTIVE WASTE (12386/04)

Letter from Ian Pearson MP, Minister of State for Climate Change & Environment, Department for Environment, Food and Rural Affairs to the Chairman


You will recall that the original “nuclear package” of draft Directives on radioactive waste management and on nuclear safety was rejected in May 2004 by Coreper, who concluded that Council Conclusions in this area were more appropriate. These Council Conclusions were made in June 2004. The Commission subsequently made a revised proposal for Directives in September 2004, but no Presidency has yet put them on its agenda for discussion in Council. The nuclear package, as you know, was the subject of a House of Lords inquiry in 2005–06 and a debate in that House last month.

The Council Conclusions set an agenda for the Commission to work with Member States to assess the outcome of work in relevant international fora and to engage in wide-ranging consultation, in order to determine whether, and if so which, Euratom measures are required in relation to nuclear safety and radioactive waste management. The assessment of international work has been carried forward over the last two years by a Council sub-group, the Working Party on Nuclear Safety (WPNS).
The final report from the WPNS, which was agreed on 13 December 2006, recommended, in respect of radioactive waste management, that a reporting and feedback mechanism should be established at EU level in order to:

(a) urge each Member State to establish and make widely available its national radioactive waste management programme;
(b) review the outcome of the Joint Convention review process to identify issues to be dealt with at the EU level;
(c) consider how Member States use standards promulgated by the International Atomic Energy Agency and other international organisations, as a basis for their national regulatory framework; and
(d) consider the relevance of the activities of the Western European Nuclear Regulators’ Association (WENRA) to the safe management of radioactive waste and spent fuel.

In addition, WPNS recommended that a summary report on work undertaken should be presented to the Council and the European Parliament at regular intervals.

The current German Presidency has proposed new Council Conclusions to set out in detail how these WPNS recommendations should be implemented. This proposal is currently under discussion in Atomic Questions Group. It involves the establishment of a senior regulators’ forum at EU level, with sub-groups addressing nuclear safety, the management of radioactive waste and spent fuel, and decommissioning. It is expected that these new Council Conclusions will be in place within the next few months.

21 February 2007

MARINE ENVIRONMENTAL POLICY (13759/05)

Letter from Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare, Department for Environment, Food and Rural Affairs to the Chairman

I am writing to inform you of the outcome of the European Parliament’s first reading of this draft Directive which took place on 13 November. This is in advance of the Finnish Presidency seeking political agreement at the Environment Council on 18 December. Our policy is for an ambitious but realistic Directive, consistent with the legislation on the marine environment which we are to introduce next year, and which delivers tangible, cost effective benefits to Europe’s marine environment.

Over 80 amendments were proposed by the Parliament. The key amendments were:

— A legal requirement on Member States to achieve Good Environmental Status (GES) for their marine waters, and that this should be achieved by 2017 rather than 2021 as originally proposed in the draft Directive. We are prepared to discuss the issues with colleagues in other Member States, including at Council, but much turns on getting the definition of Good Environmental Status right.

— A definition of GES that seeks to replicate conditions which tend towards pristine. As part of this, the European Parliament has proposed a series of targets and objectives some of which appear to be unachievable or achievable only at disproportionate cost. These include potentially unacceptable and unnecessary limitations on normal shipping and energy production operations. Our aim is to achieve GES through an ecosystem approach. This means managing human impacts in a way which preserves the functioning of the ecosystem whilst at the same time enabling the provision of goods and services on a sustainable basis. Related to this, we are arguing for a risk-based approach to focus on the most significant threats that the seas face.

— A requirement on Member States to act jointly to produce a single Marine Strategy for marine regions in order to achieve GES for their waters. On the face of it, this could simply drive Member States to lowest common denominator approaches and prove impractical. I favour placing a clear onus and responsibility on individual Member States along with a clear requirement to co-operate where necessary.

— A provision that the Directive is without prejudice to Member State competence in existing international institutional structures. We support this since we do not want to change current competency arrangements, notably in Europe’s Regional Seas Conventions.
— A requirement for the Commission to come forward with criteria and standards for good ocean governance, including measures to protect the Arctic and measures to improve the status of waters beyond those of Member States. We favour action by Member States, including through EU channels, to take protective measures and the UK is taking a leading role in international fora on this. But this proposal from the European Parliament would extend the Community’s powers in a seemingly unnecessary, impractical and ad hoc way.

More generally, the European Parliament has been helpful in highlighting in their proposed amendments the threat of climate change and the importance of integration between environmental and fisheries policy. We fully support these approaches. I am also pleased that the Parliament has recognised the importance we attach to carbon capture and storage.

Official level discussions between Member States have been proceeding well and relatively few significant differences of opinion remain. This should enable the Environment Council to focus on the key issues, notably the issue that I have highlighted above, with a view to reaching political agreement on the Directive. I am very optimistic that we will secure the UK’s interests. Discussions will then start with the European Parliament.

1 December 2006

Letter from the Chairman to Ben Bradshaw MP

Your letter of 1 December 2006 on the above Proposal was considered by Sub-Committee D at its meeting of 13 December 2006.

We appreciate your analysis of the European Parliament’s First Reading but regret that you were unable to provide more comprehensive details of the likely shape of discussions in Council, particularly as it is clear that discussion has moved some distance away from the original Commission text. We would be grateful therefore if you could forward the Common Position to us as soon as possible after the Council meeting, indicating at the same time how you intend to proceed in relation to reaching agreement with the European Parliament on the vexed issue of defining Good Environmental Status.

Against this background, we are prepared to release the Proposal from scrutiny. We trust, however, that the Government will seek a binding definition of Good Environmental Status, which is ambitious in terms of protecting the marine environment but not over-burdensome in terms of cost; and in the future the Government will keep us regularly informed of the progress of negotiations on this crucial dossier.

13 December 2006

Letter from Ben Bradshaw to the Chairman

Thank you for your letter of 13 December 2006 informing me that the Committee has released the above proposal from scrutiny.

I am pleased to enclose the Common Position agreed at the Environment Council on 18 December. You will already have seen a copy of my letter of 13 December to Michael Connarty MP on the amendments that I expected the Council to adopt. I can confirm that these were adopted. I also agree that the definition of good environmental status (GES) should be binding provided that it is realistic.

Second reading will take place during the German Presidency. My officials are currently considering areas of overlap and difference between the Council’s and Parliament’s definition and descriptors of GES. We will be discussing this in coming weeks with key stakeholders to consider how the different positions might be reconciled. I will keep you informed of progress made at second reading.

11 January 2007

MARKETING OF BEEF AND VEAL (12708/06)

Letter from the Chairman to Lord Rooker, Minister of State for Sustainable Farming and Food, Department for Environment, Food and Rural Affairs

Sub-Committee D considered your Explanatory Memorandum dated 3 October at its meeting on 18 October 2006.

The Committee is content to clear the proposal but has asked me to raise with you a concern that what is being proposed could involve a measure of over-regulation. Your views on this matter would be welcomed.

19 October 2006
MARKETING OF FRUIT PLANT PROPAGATING MATERIAL AND FRUIT PLANTS INTENDED FOR FRUIT PRODUCTION (5877/07)

Letter from the Chairman to Lord Rooker, Minister of State for Sustainable Farming and Food, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum on the above Proposal was considered by Sub-Committee D at its meeting of 14 March 2007.

We support moves to simplify as far possible agricultural legislation. We note, however, that you have some specific concerns about the potential impact of this and that you are therefore continuing to consult with stakeholders. We would be grateful therefore if you would write to us once the consultation has been completed and you have drawn conclusions.

In the meantime we shall retain the Proposal under scrutiny.

19 March 2007

NORTH SEA PLAICE AND SOLE (5403/06)

Letter from Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare, Department for Environment, Food and Rural Affairs to the Chairman

I promised to keep you informed regarding developments on this dossier which has been retained under scrutiny by your Committee as it was concerned to ensure the plan did not undermine the effectiveness of parallel arrangements to ensure the recovery of North Sea and other cod stocks. In the meantime, we have been attempting to ensure due regard is paid by the Commission to these concerns.

I can confirm that we are now close to agreement on the text (a copy of the latest draft is attached for your information (not printed)). Although the Commission continue to argue that it is taken as read that they will not take decisions in one area to the detriment of another (and that there is therefore no need to include specific reference in the regulation itself), they recognise our concerns and those of other Member States. They have therefore agreed to a statement confirming their powers to go beyond what is required of the plan itself to ensure the success of the cod recovery mechanism (copy is also attached (not printed)).

In the light of this statement, we are proposing to support the measure and hope that the Commission’s assurances will also be sufficient to convince the Committee that its concerns have been addressed. The proposal is expected to go forward for adoption as an A point at the April Agriculture and Fisheries Council.

26 March 2007

ORGANIC PRODUCTION AND THE LABELLING OF ORGANIC PRODUCTS (5101/06)

Letter from the Chairman to Lord Rooker, Minister of State for Sustainable Farming and Food, Department for Environment, Food and Rural Affairs

At its meeting on 22 November 2006 Sub-Committee D considered your Explanatory Memorandum on the above RIA.

We note the contents and believe that proposed approach of supporting the legislation but seeking certain changes is a sensible one.

Before deciding, however, whether to clear the document from scrutiny, we would appreciate some clarification from you on the changes that you are supporting and on whether you are likely to be able to secure sufficient support in Council for them.

We will therefore retain the proposal under scrutiny pending further information from you on discussions in Council.

22 November 2006

Letter from Lord Rooker to the Chairman

Thank you for your letter of 22 November 2006 following consideration by Sub-Committee D of the Supplementary Explanatory Memorandum 5101/06 and RIA. You confirmed in your letter that you agreed with the suggested approach of supporting the legislation but seeking changes, but asked for clarification of what these were and what levels of support existed.
The two main changes that we have asked for that will benefit the UK operator are to lift the requirement to use separate production lines for animal food and to exempt wholesalers dealing in pre-packed goods from the regulation. Both these changes have been incorporated into recent compromise texts, and we do not see that there is substantial opposition elsewhere. Neither point is crucial for any other Member State. We have also suggested some changes on the article that deals with trade with third countries. Several Member States were unhappy with the initial Commission proposal and suggested similar changes.

After several meetings of the Council Working Group, Special Committee on Agriculture and tri-laterals with the Presidency and Commission, it appears that the draft is in a form that could be accepted by the majority of Member States. Recent meetings have shown that even on the most controversial issue in the proposal, the prohibition of the use of GMs, it seems that the majority of Member States are willing to accept the Commission’s proposal as a workable solution.

The Commission intend to bring the proposal to December Agriculture and Fisheries Council for a decision on the general approach of the proposal.

30 November 2006

Letter from the Chairman to Lord Rooker

Thank you for your letter of 30 November 2006 on this subject, which was considered by Sub-Committee D at its meeting on 6 December.

The Committee took note of the further information which you provided and agreed to clear the proposal from scrutiny.

6 December 2006

PERFLUOROCTANE SULFONATES (PFOS) (15552/05)

Letter from Lord Rooker, Minister of State for Sustainable Farming and Food, Department for Environment, Food and Rural Affairs to the Chairman

I am writing to inform your Committee of the current position on this dossier following its First Reading in the European Parliament. I am pleased to inform you that the Council, the European Parliament and the Commission have reached an agreement on this dossier. At its first reading on 25 October 2006, the Parliament adopted seven compromise amendments which were agreed in advance between the three EU institutions.

I would therefore expect the proposed directive to be adopted at Competitiveness Council on the 4 and 5 of December.

This compromise agreement bans the use and marketing of PFOS as a substance or constituent of preparations in a concentration equal to or higher than 0.005% by mass and for semi-finished products, equal to or higher than 0.1% by mass.

In addition, the agreement allows for five specific derogations for critical uses: photoresists or anti reflective coatings for photolithography processes:

(a) photographic coatings;
(b) mist suppressants for non-decorative hard hexavalent chromium (VI) plating and wetting agents;
(c) hydraulic fluids for aviation;
(d) fire fighting foams (54 month derogation for use of existing stock).

Instead of imposing a time limit on the derogations a–d above, the Commission has committed itself to reviewing these with a view to phasing them out as soon as safer alternatives are technologically and economically feasible. For each derogation, Member States must use best available technology to minimise releases of PFOS into the environment and justify that no safer alternatives are available.

These provisions are acceptable to us as they ensure that the derogations are appropriate and not open-ended.

30 November 2006
PLANT PROTECTION PRODUCTS (11755/06)

Letter from the Chairman to Lord Rooker, Minister of State for Sustainable Food and Farming, Department for Environment, Food and Rural Affairs

At its meeting on 25 October 2006 Sub-Committee D considered the above document and your accompanying Explanatory Memorandum dated 2 October 2006. The Committee supports the principle of the legislation and believes that, broadly speaking, it will contribute to a simplification of the existing regulatory regime and may well render the authorisation process more efficient.

Your EM, however, highlights a number of concerns, many of which we share. In particular, we would like to see a greater clarity on how the proposed zonal arrangements for authorisations will function in practice and we urge you to seek improved wording in this matter in the text.

The Committee was also concerned to note that a number of important products may not be authorised under the proposed new system and would appreciate further information from you as regards the products affected and whether it would be possible to amend the proposals in such a way as to allow authorisation of existing important products while maintaining a high level of consumer protection.

We would also appreciate the Government’s thoughts on the proposed transitional measures between the current regulatory framework and the revised one.

We propose to retain this item under scrutiny pending information on your ongoing consultations with Stakeholders and clarification on the matters we have raised.

2 November 2006

Letter from Jeff Rooker MP to the Chairman

Thank you for your letter of 2 November seeking further information on three aspects of the Commission’s proposal for a Regulation of the European Parliament and of the Council concerning the placing of plant protection products on the market.

You note that the Committee would like to see greater clarity on how the proposed zonal arrangements for authorisation will function in practice. The current system under Directive 91/414/EEC is based around each Member State issuing authorisations for individual products. Directive 91/414/EEC provides for “mutual recognition” of products designed to encourage the same approvals in different Member States but this has had limited impact. The Commission is now proposing a major simplification involving a system of up to 3 different zonal authorisations for a particular product instead of up to 25 different national authorisations as at present. As the Explanatory Memorandum notes, the proposed zonal arrangements for authorisation would have important benefits, including speeding up decision making and ensuring a level playing field within the zone in terms of pesticide availability to farmers and growers. However, the details given in the Commission’s proposal are limited and there are a number of issues that would have to be resolved for a zonal system to work satisfactorily. These include making allowances for differences in climate or diet and harmonising the way Member States conduct risk assessments. As you request, we will endeavour to seek improved wording in the text, with further clarification in supplementary legislation or guidance documents if necessary, to ensure that the benefits of zonal arrangements can be realised in practice.

The Committee was also concerned about important products that may not be authorised under the proposed new system. The proposal includes new criteria for approval of active substances including toxicity and environmental ‘hazard triggers’ for CMR substances (i.e. those that are carcinogenic mutagenic or toxic for reproduction), substances that are considered to have endocrine disrupting properties, PBT substances (persistent, bioaccumulative or toxic) and vPvB substances (very persistent or very bio-accumulative). The crop protection industry estimates that as currently drafted between 12-35% of active substances could be caught by the toxicity hazard triggers. The environmental triggers as drafted would have only a small impact. We believe that any hazard triggers should be clear and set realistically and have already suggested refined criteria which would reduce the impact of the toxicity hazard triggers.

The Committee has also asked about the proposed transitional measures between the current regulatory framework and the revised one. A key issue will be the transition to the new review arrangements. Under the current system there is a rolling review programme under which active substance approvals and product authorisations are renewed on their tenth anniversary. Under the new proposals approvals and authorisations will be renewed once then granted for an unlimited period with the provision that Member States may withdraw or amend them at any time if necessary. Chapter XI of the Commission’s proposal includes suitable transitional provisions for issuing approvals and authorisations for active substances and plant protection...
products. This Chapter also details supplementary regulations, one of which will list active substances approved when the Regulation is published while the others will specify data requirements and risk assessment and labelling provisions. We have already indicated our concerns that the list of active substances should specify appropriate expiry dates and that the other supplementary regulations are issued earlier than the Commission proposes to allow an appropriate lead in time. Other details may need to be clarified in relation to whatever new regime emerges, particularly the arrangements for zonal authorisations.

I note that the Committee proposes to retain this item under scrutiny pending information on our consultation with Stakeholders. Responses to this are due by mid-December and I will endeavour to provide you with a summary of responses in January.

14 November 2006

POTATO CYST NEMATODES (8399/05)

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

Further to my letter of 5 June 200612 and your reply of 10 July 2006. I am writing to update you on developments concerning the above proposal.

The Finnish Presidency were unable to give the proposal much attention in the latter half of 2006 and therefore they focused on completing a first read through of the text. The proposal has now been taken over by Germany who, as anticipated, want to see an accelerated rate of progress, ideally completing scrutiny during their Presidency.

In preparation for the German Presidency, we have been assessing progress against UK objectives to date. As a result of this process, we have been able to identify and prioritise the remaining key issues for resolution. These issues are described in Annex A.

The first meeting of the German Presidency was held on 15 and 16 January 2007, when a second read-through of the proposal started, including consideration of amendments proposed by Member States. This was an opportunity to explore revisions to take account of the issues described in Annex A. Thanks to the groundwork laid during earlier Council Working Group meetings and a number of bilaterals, there was support for a number of UK-inspired amendments to be incorporated into a revised draft text. This was encouraging, but clearly much work still needs to be done to ensure that the amendments are retained, as there remains a diverse range of views within the Working Party as to what is required from the updated Directive.

It is also the case that there was no time to discuss the key issue of concern—soil sampling (Annex II of the proposal). These measures, if adopted unamended, would have most impact in terms of the increased burden placed on Member States. The UK has therefore been working hard to build support for alternative approaches, which remain scientifically based, but would be more balanced and proportionate. One such idea has been to include revised measures for larger fields, which at present are subject to a disproportionate effect, because of the flat rate of sampling proposed. The UK gave a powerpoint presentation during the Finnish Presidency to illustrate the problem and identify possible solutions. Another option would be an across the board reduction to the proposed sampling rates, to reflect the concerns expressed by Member States about increased costs, with only limited corresponding benefits.

The next meeting is scheduled for 16 and 17 April 2007, so there is a further opportunity to develop our ideas on soil sampling in consultation with others. We intend to discuss such ideas with, at least, the other Member States who were involved in developing the original proposals (Netherlands and Germany). This will not be an easy process as Netherlands grows its seed potatoes in very small fields (and therefore does not have the same concerns about large fields as the UK) while Germany are the main proponents of enhanced measures. Nevertheless, these Member States, together with the UK, have significant influence in this area, given the scientific expertise available and their experience in developing the original proposals. Therefore, any amendments which have the support of these Member States are more likely to be accepted by the Commission and other Member States.

The progress achieved to date in these negotiations has been encouraging, given the lack of support during the early stages, but it remains too early to give a firm indication on the extent to which remaining substantial UK objectives will be achieved by the end of the process. The Council Working Party scheduled for April is likely to be an important one particularly in determining the prospects for revised soil sampling measures. I would hope that following that meeting we will be in a clearer position to update the Committee on the

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likelihood of achieving the UK objectives set out in the Annex. Therefore, my intention is to write again after that meeting, but I felt it important to update the Committee now to report on early developments from the German Presidency. Should the Committee have any questions at this stage, I would of course be happy to answer them.

You have asked for details of the cost: benefit situation regarding the proposal. These remain largely as described in earlier correspondence, particularly letters from my predecessor of 21 October 2005 and 20 December 2005. One of the key concerns for the UK has been the poor benefit: cost ratio associated with the proposal. However, this has not been such an issue for the Commission or the majority of other Member States, who do not regard cost: benefit considerations as a priority. Much of the work undertaken by the UK Presidency in the latter half of 2005 was designed to ensure that all parties were exposed to evidence on costs and benefits through the preparation and presentation of an Impact Assessment. This has achieved some limited success, as a number of other Member States are now making statements relating to the burdens associated with particular aspects of the proposal. Despite this there remains overwhelming support for enhanced measures, with PCN being seen as an important pest to control. Given this support, we have had to accept that there will be increased costs resulting from the proposal. Our objective, therefore, has been to build support amongst others to introduce amendments which limit the scale of increased costs while still achieving the overall objective of strengthened measures to reduce the rate of further PCN spread. If we can address at least the highest priority issues set out in the Annex then I believe we will have achieved our objective.

9 February 2007

**Annex A**

**PCN: Key UK Negotiating Objectives (In Order of Priority)**

<table>
<thead>
<tr>
<th>Issue</th>
<th>Objective</th>
<th>Progress</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annex II: soil sampling/testing—additional burden</td>
<td>Reduced overall burden, or revised measures for larger fields.</td>
<td>No substantive discussion.</td>
</tr>
<tr>
<td>Art.6: official survey—new burden</td>
<td>Permit other sources of information to be included.</td>
<td>UK objective now reflected in draft text.</td>
</tr>
<tr>
<td>Annex I: list of plants—inclusion of bulbs</td>
<td>Exclusion of bulbs, or reduced impact on bulb growers.</td>
<td>No substantive discussion on Annex I, but most bulb growers would be exempt under a UK-inspired revision to the official investigation requirements.</td>
</tr>
<tr>
<td>Art. 9: official control programme—compulsory use of resistant varieties</td>
<td>Flexibility to decide control measures on a case by case basis.</td>
<td>UK objective now reflected in draft text.</td>
</tr>
<tr>
<td>Art. 9: official control programme—no scope for authorising other programmes</td>
<td>Provision to authorise programmes undertaken by growers or other organisations.</td>
<td>UK objective now reflected in draft text.</td>
</tr>
<tr>
<td>Art. 18: implementation date—time to adapt</td>
<td>Minimum of 2 years.</td>
<td>Still to be discussed.</td>
</tr>
<tr>
<td>Annex III.I: verification options—restricted options</td>
<td>Extended options</td>
<td>No substantive discussion.</td>
</tr>
<tr>
<td>Art. 11: notification of resistance breakdown—practicality</td>
<td>Removal of compulsory requirement.</td>
<td>UK objective partly reflected in draft text; reduced emphasis on enforcing such a requirement.</td>
</tr>
<tr>
<td>Annex III.III: waste disposal—practicality</td>
<td>Amended requirements to ensure practicality.</td>
<td>No substantive discussion.</td>
</tr>
</tbody>
</table>
AGRICULTURE AND ENVIRONMENT (SUB-COMMITTEE D)

PROTECTION OF CHICKENS KEPT FOR MEAT PRODUCTION (9606/05)

Letter from Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare, Department for Environment, Food and Rural Affairs to the Chairman

I am writing to update you on the progress of negotiations in Brussels on the meat chicken welfare Directive and to respond to your on-going concerns about animal welfare standards in third countries.

EM 9606/05 set out the detail of the proposal for the Directive and a subsequent SEM provided information on the changes that the UK made to the proposal during its Presidency.

I wrote to you on 23 May 2006 in response to your concerns that any improvements in EU animal welfare standards could be undermined by imports produced more cheaply from third countries due to less stringent welfare conditions. You asked in particular whether EU consumers could be provided with assurances that chicken imported from third countries had been reared under welfare conditions equal to those proposed by the Commission, details of monitoring of welfare standards in third countries; and sanctions imposed if standards were found to be failing.

The meat chicken welfare Directive will provide common welfare standards for producers throughout the EU and thus offer protection to our industry’s competitiveness within the single market. However, standards in third countries remains an issue which cuts across all our work in animal welfare, not just meat chicken welfare. As I explained in my earlier letter, WTO rules do not permit import restrictions on the basis of welfare. However there is a clear demand in the UK and EU for improved welfare standards and in parallel with changes in Europe we need to seek recognition of the need for worldwide welfare standards. To this end, I have asked my Chief Veterinary Officer to consider how we can engage better on a European and international basis to increase welfare standards across the world, so that we can carry on improving our welfare standards without jeopardising the livelihoods of our producers.

Work to develop the proposal in the European Council has continued. The objectives and structure of the Directive is unchanged but the latest proposal from the Finnish Presidency now includes: a lower maximum stocking density limit of 32kg/m² in 2008; an upper maximum stocking density limit of 38kg/m² in 2012 subject to review in 2011 following Commission report; and a tolerance of 5% on final stocking density to allow for small flock variations from the planned weight at slaughter (The lower limit could thus be a maximum of 33.6kg and the upper limit a maximum of 39.9kg before a producer was in breach of the rules). Encouragingly, Finland has reduced administrative burdens in a number of areas including record keeping, enforcement and inspection and the role of the competent authorities.

The Finnish Presidency aim to gain agreement to the draft Directive at December’s agriculture Council. We continue to stress that any Directive must offer real improvements for meat chickens within an acceptable timeframe and avoid unnecessary cost and complexity to the industry and competent authorities. As things stand, the current Finnish proposal does, on balance, achieve these outcomes.

13 November 2006

Letter from the Chairman to Ben Bradshaw MP

Sub-Committee D considered your letter of 13 November at its meeting on 6 December.

Our concerns about the potential for imports from third countries with lower chicken welfare standards to undermine the improvements envisaged in the Directive remain. Nonetheless, noting that you have asked your Chief Veterinary Officer (CVO) to explore how we might engage effectively to improve standards in third countries, we are content clear the proposal from scrutiny.

We would ask however that you keep us informed of developments on this proposal and provide regular updates of progress in the work which your CVO is undertaking.

6 December 2006

Letter from Ben Bradshaw MP to the Chairman

As requested in your letter of 6 December I am writing to provide you with an update of developments in negotiations of a new meat chicken welfare Directive and progress on the work we are undertaking to engage better on a European and international basis to increase welfare standards across the world.

Unfortunately, negotiations on the Directive collapsed at the end of last year. The Finnish Presidency had worked hard to produce a compromise proposal which was supported by many Member States, including the UK. We felt that this document offered the best chance of securing real improvements to the welfare of meat chickens. However, a small number of countries could not agree to the text and thus a vote was not taken at December’s Agriculture Council. It is not clear whether the German Presidency will re-start negotiations. I am not optimistic.

The Department’s CVO and her team engages on a European and wider international basis to increase welfare standards across the world and thus address competition issues arising from high standards in the UK. The UK was actively involved with the Council of Europe in arrangements for the workshop on “Animal Welfare in Europe: achievements and future prospects” held in Strasbour in November 2006 which aimed to promote the practical application of legislation on animal welfare. This involved some 50 countries including Russia and countries from Asiatic Europe with observers from New Zealand and USA. The conference agreed a declaration aimed at better co-ordination of the animal welfare work of the Council of Europe, the World Organisation for Animal Health (OIE) and the EU.¹⁴

There are a number of current workstreams which are relevant to improving welfare standards in third countries. We will continue to work with the OIE which comprises nearly 170 member countries to develop animal welfare guidelines. A meeting is planned for May 2007 at which we will support adoption of revisions to the guidelines on the welfare of animals during transport by sea and by land. We will continue to support the work of the EC in welfare discussions during equivalence negotiations under EU Agreements with the USA, Canada and New Zealand.

We will continue to work with the FCO to support the World Society for the Protection of Animals in its initiative to gain agreement to a Universal Declaration on Animal Welfare to further encourage nations to respect the welfare needs of animals to promote animal welfare. A ministerial conference intended to prepare the ground for adoption by the United Nations is planned for the end of the year in New York.

Finally, we will continue to support Commission activity to achieve greater acceptance of animal welfare policies at World Trade Organisation level. Progress within the WTO is, however, likely to be slow with no significant developments expected in the foreseeable future. We will however ensure that the Committee is kept advised of developments.

22 January 2007

Letter from the Chairman to Ben Bradshaw MP

Thank you for your letter of 22 January 2007 on the above which was considered by Sub Committee D at its meeting of 7 February.

We are grateful for your update and we would like to re-iterate our support for your efforts in attempting to get this important Directive agreed.

7 February 2007

REFORM OF FRUIT AND VEGETABLE REGIME (5572/07)

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

Your Explanatory Memorandum on the above Proposal was considered by Sub-Committee D at its meeting of 14 March 2007.

We support the move to bring the fruit and vegetable sector within the reformed Common Agricultural Policy and to simplify the system of Producer Organisations.

As you highlight, clarification on the crisis management and promotion measures to be financed is certainly required. We are particularly interested in your view on whether it is appropriate for the Council to adopt a Regulation that obliges Producer Organisations to undertake certain promotional activities.

¹⁴ Further information is available at http://www.coe.int/t/e/legal%5FaVairs/legal%5Fco%2Doperation/biological%5Fsafety%2C%5Fuse%5Fof%5Fanimals/Seminar/
We would also appreciate a more detailed explanation of the policy implications in the UK relating to the arrangements for financial assistance to the operational programmes of POs and the inclusion of fruit and vegetable land within the scope of the Single Payment Scheme.

We shall retain the Proposal under scrutiny and we look forward to your comments on the above points.

19 March 2007

REGISTRATION, EVALUATION, AUTHORISATION AND RESTRICTION OF CHEMICALS (REACH) (15409/03)

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

I am writing to inform you of developments on the above dossier, which achieved Common Position at Environment Council on 27 June. Your Committee considered Explanatory Memorandum 15409/03 of 17 December 2003 and Supplementary Explanatory Memorandum 15409/03 of 17 April 2004 on 6 January 2004 and 27 April 2004 respectively and gave scrutiny clearance on 9 November 2005.

I last wrote to you on 24 July 2006\textsuperscript{15} prior to the start of formal negotiations between the Council (under the Finnish Presidency) and European Parliament to secure a Second Reading deal, noting that there was considerable convergence between the positions of both institutions and that achieving a balanced outcome to the negotiations without the need to enter lengthy conciliation was very much in the UK’s interests.

I am therefore pleased to inform you that the negotiations were successfully concluded on 30 November, with a Second Reading deal being agreed that maintains the good balance of the Common Position in protecting human health and the environment, at the same time as ensuring industry competitiveness and innovation. The negotiations were for the most part fairly straightforward, reflecting the closeness of the two sides’ positions to start with, but became more difficult towards the end on the central issue of substitution as part of authorisation of hazardous chemicals for continued use.

Throughout the process, the UK played a significant and constructive role in developing the Presidency’s negotiating mandate, contrary to some unhelpful media briefing by NGOs, and newspaper reporting towards the end of the process alleging efforts by the UK to water down or even wreck the deal over the issue of substitution. Our previously-stated commitment to REACH has not altered in any way.

A total of 359 amendments to the REACH Common Position text were tabled by the Parliament for consideration at Second Reading. At the vote of the Parliament’s Environment Committee on 10 October, 172 amendments were carried, including the package proposed by the Committee Rapporteur, Guido Sacconi MEP (Italian Socialist). This contained some robust proposals on authorisation and substitution, and was carried by a significant majority of 42 votes for, 12 against, and six abstentions. In addition to authorisation and substitution, the other main issues of concern to the Parliament were Duty of Care; animal welfare; communication of information, the new European Chemicals Agency and Parliament involvement therein; registration/data sharing; and comitology (new regulation with scrutiny procedure).

Duty of Care

While the principle of a general duty of care is implicit throughout the REACH regulation, a specific reference to the phrase “duty of care” would have had potentially serious legal implications within the UK and some other Member States having a common law system, including unlimited liability for industry. Using a text proposed mainly by the UK, the Presidency was able to persuade the Parliament to accept alternative language that strengthened the principle without using the exact phrase.

Animal Welfare

In line with UK policy to minimise animal testing, and replace it where possible with suitable alternative testing methods, the REACH text has been strengthened in this regard, including through enhanced sharing of test results at registration to avoid duplication of testing, and the European Chemicals Agency submitting a report to the Commission every three years on progress in replacing animal testing with alternative methods.

COMMUNICATION OF INFORMATION

A key feature of the REACH system is the production, collation, and effective use of information on chemical risks and how they can be managed. The text has been strengthened to ensure that where hazardous chemicals have been used in the manufacture of articles, information on safe use of the articles is made available on request by consumers. The European Chemicals Agency will also draw up relevant guidance and best practice for industry on communication of information on the risks and safe use of chemicals. A key demand of the Parliament to require Chemical Safety Reports for all chemicals produced or imported under 10 tonnes per annum was resisted, thereby preserving projected cost savings to industry (mainly SMEs) of some 650 million Euros made originally at the First Reading of REACH under the UK Presidency in 2005.

NEW EUROPEAN CHEMICALS AGENCY

Implementation and effective operation of REACH across the EU will be overseen by a new European Chemicals Agency based in Helsinki. The Agency will work closely with the REACH Competent Authorities appointed in each Member State to implement the Regulation in their national contexts. The Regulation sets out details of the Agency, including its composition and management arrangements, key tasks, functions of its various parts, and budgetary arrangements. The Parliament has a role in deciding the composition of the Management Board, in line with precedence in other similar bodies.

REGISTRATION/DATA SHARING

The Registration element of REACH is the core of the system and is essential to ensuring the necessary information is generated to be able to take decisions about safe handling and use of chemicals. A key part of this is data sharing between registrants, to avoid unnecessary duplication of registrations (“One Substance, One Registration”), as well as tests (including animal tests). The negotiations clarified a number of points in regard to these aspects, including the proportionate sharing of test costs along with sharing of the test data, and establishing a revised timeframe of seven years for a Commission review of the exemption from the requirement to perform a chemical safety assessment on hazardous chemicals produced/imported in quantities of less than 10 tonnes per annum.

Additionally, producers or importers not wishing to register any given chemicals are encouraged to communicate this information to their downstream users sufficiently in advance of the relevant registration deadline to allow the users to identify alternative sources of supply.

COMITOLGY

In July, a new comitology procedure, Regulatory Procedure with Scrutiny, came into effect. This gives the European Parliament a say in the adoption of implementing measures, but only in matters of co-decision. The Second Reading negotiations agreed the instances within REACH when this new comitology procedure may be used to change non-essential elements of the regulation.

AUTHORISATION AND SUBSTITUTION

The “adequate control” and “socio-economic” authorisation routes for continued necessary use of hazardous chemicals are retained, but with the substitution element strengthened. In both cases, a hazardous chemical may continue to be used for a time even when a safer alternative is available, but when applying for the necessary authorisation to do so, a company must now submit a substitution plan giving details of how it will be substituted with the alternative. This was previously voluntary.

The length of authorisation periods before first review will be determined case by case, taking account of relevant factors such as the required assessment of possible alternatives, including the time likely to be needed to develop suitable alternatives for substitution. This will provide an incentive for industry to make genuine progress in such research and development, as there is no presumption of authorisations being renewed automatically.
CONCLUSION

In summary, REACH has been strengthened, not diluted, and will fill the current huge data gap covering most of the 30,000 chemicals supplied to the EU market above 1 tonne per year, leading to better health and environment protection through better knowledge of the chemicals and their various exposure risks throughout the supply chain. It will also deliver tough new controls on the most harmful chemicals, and provides a clear framework for their substitution with safer alternatives. At the same time, steps are taken to minimise animal testing, with tighter controls and closer scrutiny of any new tests that may be proposed.

The European Parliament is due to vote on the deal in plenary on 13 December. If approved, the Council can be expected to also formally approve it at the Environment Council on 18 December. The expected date for entry into force, following completion of other administrative procedures, is 1 June 2007.

12 December 2006

Letter from the Chairman to Lord Rooker

Thank you for your letter of 12 December 2006 on the subject of REACH. Your letter was considered by Sub-Committee D at its meeting of 17 January 2007.

As you will be aware, the Committee takes this issue very seriously. We are pleased that the Finnish Presidency was able to reach a satisfactory agreement with the European Parliament. From reading your letter it seems that the final agreement does indeed strike a good balance between protecting human health and the environment at the same time as ensuring industry competitiveness and innovation.

In the Committee’s report on EU Chemicals legislation in February 2002, it was stated (Para 209) that we would only be satisfied with new legislation if it a) speeds the process of identifying chemicals that require risk management, b) enables risk reduction measures to be adopted without delay following identification, c) creates a sense of ownership among stakeholders and d) provides for appropriate post-marketing surveillance.

We believe that the final agreement goes some way to meeting the first three points above but we remain concerned about post-marketing surveillance. We would therefore request you consider how this can be dealt with at a national level.

18 January 2007

RESTRICTIONS ON CAT AND DOG FUR AND PRODUCTS CONTAINING SUCH FUR (15674/06)

Letter from the Chairman to Ben Bradshaw MP, Minister of State for Local Environment, Marine and Animal Welfare, Department for Environment, Food and Rural Affairs

Sub Committee D considered your Explanatory Memorandum dated 18 December 2006 on the above proposal at its meeting of 17 January 2007.

We agree with the Government that, bearing in mind consumer concerns, there is merit in this proposed legislation.

We note however that the Commission is proposing the legislation as an Internal Market measure. We are concerned that a proposal which appears to stem from ethical concerns is being introduced as an Internal Market measure and that this could set an undesirable precedent for other areas of Community business. We would therefore welcome your assurance that you are content that the legal basis for this proposal is a sound one.

We also note the concerns of HM Revenue and Customs about the practical implementation of a ban. We trust that the Government will endeavour to ensure that implementation in the UK is as cost-effective and practical as possible—for example, along the lines of the Option 2 described in the Partial RIA under the heading of “Enforcement Costs”.

We will retain the proposal under scrutiny pending information from you on the issue of the legal basis and we would wish to be kept informed of further developments as discussions continue on the draft legislation in the Council and the European Parliament.

18 January 2007

Letter from Ben Bradshaw MP to the Chairman

Thank you for your letter of 18 January following Sub Committee D’s consideration of the Explanatory Memorandum on the above proposal.

Council and Commission legal services agree that introducing this Internal Market measure is appropriate. The Commission’s Animal Welfare Action Plan indicated that it would respond to public concern about the trade in cat and dog fur.

The Commission has brought forward this proposal for a ban on this trade on the grounds of Internal Market stabilization. This is deemed appropriate as a number of Member States have already introduced national measures and it is necessary to harmonise measures throughout the Community. There is no legal base available for use in the Treaty to take action on ethical grounds. I am content with this position.

Implementation of the proposal must be cost effective and proportionate to the risks incurred and that is the route that we propose to take. On the basis that there is little or no such trade taking place, and a testing regime has yet to be agreed, a simple approach is appropriate.

I shall be keeping your Committee informed as discussions continue and on any developments arising from European Parliament opinion.

12 February 2007

RESTRICTIONS ON MERCURY DEVICES (6693/06)

Letter from Lord Rooker, Minister of State for Sustainable Farming and Food, Department for Environment, Food and Rural Affairs to the Chairman

Further to my letter on 2 June 2006 I am writing to update you on developments concerning the above proposal and to alert you to the prospect of a first reading deal.

Following the European Commission’s proposal to amend Directive 76/769/EEC (on the marketing and use of certain dangerous substances and preparations) and restrict the marketing of certain measuring devices containing mercury, we produced an initial Regulatory Impact Assessment in March 2006.

You wrote to Lord Bach on 24 April 2006, requesting further information on the possible impacts of the proposed restrictions on businesses specialising in supplying such instruments for domestic use. I wrote with an initial response on 2 June 2006. Since then, we have conducted an extensive public consultation exercise. Although documents were sent to all identified UK businesses involved in manufacture and restoration of domestic mercury instruments, no responses on the possible impacts of the proposals on industry were received, despite this being specifically requested. It is unlikely that we will be able to obtain any further information on this particular issue.

Discussion of the proposals has continued within European Commission Technical Harmonisation Working Parties and the European Parliament Committee on the Environment, Public Health and Food Safety. The UK has supported the Commission’s proposals as they currently stand, but there have been moves to extend their scope to include health care instruments and specialist industrial and scientific measuring devices.

We have stated that the UK could accept the inclusion of healthcare instruments, provided this incorporated a derogation for sphygmomanometers (blood pressure monitors) in professional health care, to be reviewed after 36 months, and that the following special cases were exempted:

— validation of mercury-free blood pressure monitors;
— use of mercury sphygmomanometers in pharmaceutical drug trials.

The UK view is that specialist industrial and scientific measuring devices should not be included at this time, but such uses should be reviewed as quickly as reasonably possible. There are several applications where such instruments are still essential—for example, in high precision pressure measurement standards for safety critical aerospace instruments.

The Commission has stated that any antique instruments imported from outside the EU would be unable to be sold under the proposed restrictions, as they would be deemed as being placed on the EU market for the first time. However, such devices contain little mercury and will not be needlessly disposed of, or subject to casual breakages, because of their intrinsic value. Restricting these imports would have a disproportionate effect on EU auction houses, where the presence of a barometer in a mixed lot may cause the whole lot to be diverted to a non-EU auction house. This would affect the wider entrepôt role of cities such as London, without having any impact on the global use of mercury as antiques trading would continue outside of the EU. The

UK has proposed a derogation to allow antique (i.e. made before 1950) measuring devices to be exempted from the proposed marketing restrictions. Support for this position has been received from the European Parliament.

Negotiations are now approaching a conclusion and there is the prospect of a first reading deal in the EP Plenary towards the end of October. The proposal may then go to the October Environment Council for political agreement, so we may shortly need to be in a position to vote.

11 October 2006

Letter from the Chairman to Lord Rooker

Thank you for your letter dated 11 October 2006, which Sub-Committee D considered at its meeting on 1 November.

We have noted the position both on domestic instruments and on moves to extend the proposed Directive to cover instruments in other areas, and we have noted your Department’s response in each case. We agree especially with your proposal to seek a derogation in the case of antique instruments containing mercury, noting the disproportionate effect that the inclusion of such instruments could have on the position of London as an entrepot for the sale of such devices. We are therefore content to clear this proposal from scrutiny but would ask you to keep us informed of progress.

2 November 2006

Letter from Lord Rooker to the Chairman

I wrote to you on 11 October about this proposal and to alert you to the prospect of a first reading deal. In your reply of 2 November, you requested to be kept informed of progress and I am therefore writing to update you on recent developments.

Following extensive discussion by the Working Party Technical Harmonisation (Dangerous Substances) of the Commission’s original proposal and taking account of a number of draft amendments by the European Parliament, a compromise package was agreed by the Working Group on 24 October 2006. This contained restrictions on mercury in fever (clinical thermometers) and other measuring devices for sale to the general public, but included a permanent derogation for all instruments over 50 years old (i.e. antiques) and a two-year derogation for domestic barometers. Devices used in healthcare and industrial and scientific applications were not included, but would be reviewed within two years. The package was approved by the Permanent Representatives Committee (COREPER) on 31 October.

The European Parliament adopted its Opinion at first reading on 14 November. This included not only the compromise package, but also an amendment granting a permanent derogation to (domestic) barometers together with licensing mechanisms to be established by Member States. In addition, the proposed restrictions would be extended to healthcare and scientific/industrial applications.

The Presidency is aware that for many delegations, including the UK, the EP’s Opinion is not acceptable. It has therefore been taking steps to find out whether Member States would support the text of the compromise agreed by COREPER on 31 October, as a political agreement which could be adopted by Council as a Common Position. The Presidency has also been talking to the EP.

The Presidency will be reporting back to Member States shortly. I will keep you informed of how these discussions have developed.

9 February 2007

ROYAL COMMISSION ON ENVIRONMENTAL POLLUTION

Letter from Ian Pearson MP, Minister of State for Climate Change & Environment, Department for Environment, Food and Rural Affairs to the Chairman

You may recall my announcement of a review of the Royal Commission on Environmental Pollution (RCEP) to the House on 27 November 2006. The review is being carried out by independent consultants PriceWaterhouseCoopers (PWC), who are now gathering oral and written evidence from those who have had experience (either individual or organizational) with the work of the RCEP.

As the sponsoring department, Defra, on behalf of government, is carrying out this review as part of a recommendation that public bodies are subjected to periodic and detailed study to ensure that they are still delivering high quality services, that are adequately resourced, and to determine whether their function is still necessary. The review is addressing three main issues: Effectiveness and impact of RCEP reports, RCEP
funding and performance, and Relationship with government and other organizations. These are explained in detail in the Terms of Reference of the review which were agreed by Ministers, the Devolved Administrations and the RCEP.

We would be grateful for a response to the questions listed in the Terms of Reference. Of course, feel free to give views only on the issues that relate most to your level of experience/interest with the work of the RCEP. Please send your response to David Gimson at the address below by Thursday 4 April. Unless otherwise specified, it will be assumed that you have no objection to your response being made available, if required, to third parties under the Freedom of Information Act.

28 March 2007

STATISTICS ON PLANT PROTECTION PRODUCTS (16738/06)

Letter from the Chairman to Lord Rooker, Minister of State for Sustainable Farming and Food, Department of Environment, Food and Rural Affairs

Your Explanatory Memorandum on the above Communication was considered by Sub-Committee D at its meeting of 21 March 2007.

We agree with the Government that it would not be appropriate to adopt this Regulation before the two key elements of the Thematic Strategy have been agreed.

We will retain the proposal under scrutiny with the intention of re-examining it on completion of the consultation process and within the context of the Council’s discussion of the Strategy as a whole.

26 March 2007

SUGAR IMPORTS INTO BULGARIA AND ROMANIA (16902/06)

Letter from the Chairman to Lord Rooker, Minister of State for Sustainable Farming and Food, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum on the above proposal was considered by Sub-Committee D at its meeting of 21 February 2007.

We endorse the approach adopted by the Government given that there are grounds to believe that the proposed measure could give Bulgarian and Romanian refiners a competitive advantage over the UK refiner. The actual level of that competitive edge is intimately linked to the successful implementation of the Sugar Reform (Regulation 318/2006) agreed under the UK Presidency in 2005. In that light we would be interested to receive you assessment on the success or otherwise of its implementation thus far.

As we share the Government’s reservations in regard to this Proposal, we are not lifting our scrutiny of it. We commend the Government’s approach, however, we would be grateful if you would report back to us on its success or otherwise.

21 February 2007

Letter from Lord Rooker to the Chairman

Thank you for your letter of 21 February relating to the above proposal. I am afraid that I cannot claim any success in our opposition to this Commission proposal. When it was discussed in the Special Committee for Agriculture we made clear both to the European Commission and to the current EU Presidency that we could not support this measure. Ours proved to be a lone voice in opposition, with all other Member States supporting the proposal.

There are rather few Member States with a sugar cane refining industry, and the UK has by far the largest. Given the overwhelming majority in favour of the proposal, it is now expected that this item will be presented to the Agriculture Council for adoption as an “A-Point” shortly.

Separately, you asked how the 2005 sugar reforms adopted under the UK Presidency were progressing. Generally speaking, the measures introduced by Regulation 318/2006 are progressing well. The new arrangements introduced by that Regulation on sugar prices and quota management have been in place since 1 July 2006 and no major problems have occurred. But I am far less sanguine about the implementation of Regulation 320/2006 which was introduced at the same time. This Regulation established a Voluntary Restructuring Scheme, the main mechanism through which the EU is to reduce its sugar production to manageable proportions.
The Restructuring Scheme is set to last for four years and was designed to help producers to close factories in situations where they are no longer viable under the new pricing structure. This scheme is intended to remove up to six million tonnes of production and is funded by a compulsory levy on sugar production. There were a good number of applications to the Scheme in the first year, amounting to around 1.5 million tonnes. Unfortunately this progress has not been maintained in the second year. The deadline for applications in year two passed on 31 January 2007 and applications for only around 650,000 tonnes were received.

Commissioner Fischer Boel commented at the November and December 2006 Agriculture Councils that the Restructuring Fund was not being allowed to operate as intended and that too few companies were benefiting from its existence. She announced on 29 January that 2 million tonnes would have to be withdrawn from the EU sugar market in the 2007–08 sugar marketing year to allow the market to function properly in the short term. The first steps to achieve this withdrawal were agreed at the 22 February Sugar Management Committee using the powers contained in Articles 19 and 42 of Regulation 318/2006. More fundamentally, the Commissioner also announced that the Commission would come forward with proposals in regard to the operation of the Restructuring Fund, with the purpose of making it more efficient and to ensure that sufficient quota was renounced by the industry in the coming years. She said that the main objective must be to avoid a simple linear cut at the end of the restructuring period to the detriment of the sustainability of the whole sector.

This is a disappointing situation and we shall be seeking to ensure that the reforms are put back on track through appropriate amendments to the Restructuring Scheme for its remaining two years. We currently understand that the Commission’s intention is to make proposals to Council in April with the objective of obtaining agreement by September.

8 March 2007

SUSTAINABILITY IN EU FISHERIES (11373/06)

Letter from the Chairman to Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare, Department for Environment, Food and Rural Affairs

I refer to your Explanatory Memorandum of 14 August on the above subject, which Sub-Committee D considered at its meeting on 18 October 2006.

The Committee considered the proposals in this document alongside those in another (11984/06), relating to the rebuilding of cod stocks in the Baltic Sea. Fortuitously, we had before us also press reports of a call, by the International Council for the Exploration of the Sea, for a temporary halt on cod fishing in the North Sea in order to rebuild depleted stocks.

The Committee is content to clear both proposals but has asked to be kept in close touch with developments on the issue of fishing sustainability.

I have been asked to seek your comments specifically on the reports of a need for a temporary halt to cod fishing in the North Sea and to raise with you, in addition, concerns which a number of Members felt over the need to ensure that the rules designed to achieve fishing sustainability are applied equally in designated areas to all fishing nations. This latter request stems from reports that have reached some Members of the Committee that fishing for bass in the Bristol Channel is being exploited by certain other Member States in contravention of the rules and to the detriment of British fishermen.

19 October 2006

Letter from Ben Bradshaw MP to the Chairman

Thank you for your letter of 19 October. I am writing in response to a number of concerns you have raised regarding a possible temporary halt to cod fishing in the North Sea, other Member States’ compliance with enforcement rules and the current situation on fishing for bass in the Bristol Channel. I will deal with each in turn.

You will be aware that this is not the first time that there has been a call from ICES for a moratorium on cod fishing in the North Sea. In the past, the Commission and Member States have avoided taking such draconian action in the light of socioeconomic concerns about the future competitiveness of the EU catching sector and other ancillary elements within the wider industry. We would anticipate a similar approach from the Commission this time around, with a focus on reducing the quota for the stock and further controls to ensure the effectiveness of the cod recovery programme—in the form of additional pressure on days at sea for vessels catching the species. We will support the generality of such an approach. However, given the significant contribution already made by the UK whitefish fleet in reducing effort on cod in recent years, we will be
looking to ensure that other fisheries where cod is a by-catch, also make a full contribution to reducing cod mortality, commensurate with the particular impact of that fishery.

Your letter also said that some of your Members had concerns about the need to ensure that the rules introduced to achieve fishing sustainability are applied equally to all fishing nations. I can assure you that inspection missions to Member States, including the UK, are carried out by EU Inspectors on a regular basis. These look at the levels and means of controls that are being applied to such measures on recovery stocks, thereby ensuring any deficiencies in application are identified and quickly addressed.

Finally, you have drawn attention to fishing for bass in the Bristol Channel by other Member States in contravention of EU rules. In the absence of further detail, I am assuming that you refer to activities by Belgian beam trawlers.

I am aware that there have been reports from the UK industry about Belgian beam trawlers switching to the use of twin otter trawls in the six to 12 mile limit in UK waters. I should make it clear from the outset that this activity is not illegal.

My officials have made extensive checks, using VMS data, to assess the extent of this activity and have discovered the following: recently, two Belgian beam trawlers have switched to the towing of twin otter trawls instead of beam trawls as part of a Belgian Government initiative to run trials (with subsidies from the Belgian Government) to see if these vessels, which are heavy users of fuel, could fish more efficiently with these lighter trawls. Both vessels have been operating in the Bristol Channel & Celtic Sea area and made several landings into Milford Haven. We understand that this subsidy scheme is due to be reviewed and may terminate shortly. Reports from the Marine Fisheries Agency (MFA) indicate that these fishing activities have not yet proved to be cost effective and it is considered unlikely that owners will be able to sustain this method of fishing for much longer. The catch composition of these landings is similar to that resulting from beam trawling but the quantity is significantly reduced, so that whilst fuel savings are achieved, there is no overall improvement in profitability. Both of these vessels are active off the south coast of Wales.

No fishing activity by any Belgian vessels over 221 kW and converted to twin otter trawling has been evident within 12 miles of the north coasts of Devon and Cornwall with the exception of one vessel that fished for four hours in the six to twelve mile zone off the coast of Devon. The same vessel also fished for a period of 48 hours to the north of Lundy Island in the outer belt towards the end of June.

We will of course continue to monitor the situation, but at present, there does not appear to be a clear cut case on conservation grounds for approaching the Commission to request that the twin otter trawling activities should be banned. You should also note that any ban could not be restricted to Belgian vessels, but would have to be extended to all EU vessels eligible to fish in the six to 12 mile zone.

3 November 2006

SUSTAINABLE USE OF PESTICIDES (11896/06, 11902/06)

Letter from the Chairman to Lord Rooker, Minister of State for Sustainable Food and Farming, Department for Environment, Food and Rural Affairs

At its meeting on 25 October 2006 Sub-Committee D considered the above document and your accompanying Explanatory Memorandum (11902/06) dated 2 October 2006.

We welcome the Thematic Strategy and are content to clear it from scrutiny. We will however be examining carefully the individual legislative items which come forward under this Strategy.

2 November 2006

Letter from the Chairman to Lord Rooker

At its meeting on 25 October 2006 Sub-Committee D considered the above document and your accompanying Explanatory Memorandum (11896/06) dated 2 October 2006.

The Committee supports the principles behind the Directive. We note however that the United Kingdom already has a relatively well advanced regime with regard to this sector, and that consequently a significant number of the proposed provisions are already in place. We would wish to see further provisions as complementing rather than duplicating the existing UK regulatory framework. The Committee is also concerned, in the light of the success of initiatives such as “The Voluntary Initiative”, to ensure that any measures adopted at the EU level do not introduce an unnecessary level of “red tape” into situations where a voluntary approach is already succeeding.
We share your concerns regarding the potential derogation for aerial spraying and agree that strict provisions must be drawn up on this with clarity.

In the light of the above, we are retaining the proposal under scrutiny pending further information on the outcome of Stakeholder consultations and on progress of discussions at Council level.

2 November 2006

Letter from Lord Rooker to the Chairman

When your Committee considered these Explanatory Memoranda at their meeting of 25 October, they were retained under a scrutiny reserve pending submission of details of the outcome of the public consultation.

The consultation identified key elements of the proposals, outlined the Governments initial views and sought comments on stakeholder views. It ran from September to December last year and we have now completed our analysis of the responses.

We received a total of 35 responses commenting on the Thematic Strategy itself and the two pieces of legislation which are central to it. Additionally stakeholders provided a small amount of information on the costs associated with aspects of the proposals. These will enable us to better assess the impact of the proposals on UK industry, but are not expected to differ greatly from those identified in the initial RIAs.

A paper presenting an analysis of the consultation responses we received is attached. This is also being made available on the website of the Pesticides Safety Directorate at www.pesticides.gov.uk.

14 March 2007

THEMATIC STRATEGY ON SOIL PROTECTION (13401/06)

Letter from the Chairman to Lord Rooker, Minister of State for Sustainable Farms and Food, Department for Environment, Food and Rural Affairs

At its meeting on 22 November 2006 Sub-Committee D considered your Explanatory Memorandum dated 17 October 2006 on this subject.

We share the concerns which your EM expresses about these proposals. Indeed, we remain to be convinced of the need for regulation—as distinct from training and education—in this area.

We share your concerns also about the costs which are likely to be involved and we note that you are commissioning a Regulatory Impact Assessment. Your EM states that “an initial view suggests that the Commission has underestimated implementation costs.” In fact, the Commission document itself states (Paragraph 10) that the costs could be in the region of €250 million a year during the first 25 years of the Directive’s life and that only thereafter would they fall to the €2 million mentioned in your Explanatory Memorandum. These are very significant costs indeed and we would be interested to hear whether your RIA confirms them.

In the meantime we shall be retaining this proposal under scrutiny and would be grateful if you would forward a copy of the RIA when it is available.

22 November 2006

THEMATIC STRATEGY ON THE PREVENTION AND RECYCLING OF WASTE (5050/06)

Letter from Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare, Department for Environment, Food and Rural Affairs to the Chairman

First, the Environment Council adopted Conclusions on the Waste Thematic Strategy when it met on 27 June 2006. I enclose a copy of the Council’s Conclusions which were adopted without prejudice to the negotiations on the associated legislation.

Second, discussion on the draft legislation began under the Finnish Presidency in July 2006. Progress was slow and the stated objective of reaching Political Agreement by December 2006 was not achieved. The Finnish Presidency tabled the enclosed Progress Report under “Other Business” at the Environment Council’s meeting on 18 December 2006.

Third, the European Parliament carried out its First Reading of the Commission’s legislative proposals at a plenary session on 12 and 13 February 2007. The Parliament debated and voted on 189 amendments to the Commission’s proposals. Of these, 97 were put forward by the Parliament’s Environment Committee and others were tabled by individual MEPs. 120 amendments were adopted by the Parliament.

The amendments are adopted by the European Parliament are wide-ranging but the key areas are:

- **Waste prevention**: an adopted amendment would require Member States to take all necessary measures to stabilise their overall waste production by 2012, as compared to their overall annual waste production in 2008.

- **Recycling targets**: an adopted amendment specifies that by 2020 Members States would have to achieve at least an overall re-use and recycling level of 50% for municipal solid waste and 70% for construction, demolition, industrial and manufacturing waste.

- **Separate collection**: an adopted amendment would require that by 2015 Members States shall set up separate waste collection schemes for at least the following: paper, metal, plastic, glass, textiles, other biodegradable wastes, oil and hazardous wastes.

- **Energy recovery**: an adopted amendment would strike out the Commission’s proposal to set energy-efficiency criteria which, if met, would enable municipal waste incineration plant to be reclassified from disposal operations to recovery operations.

- **Minimum standards**: an adopted amendment would require minimum standards for waste treatment operations to be set by Directives and by co-decision, rather than by “comitology” as the Commission had proposed.

- **End-of-waste criteria**: an adopted amendment would required the criteria for when wastes have been fully recovered and cease to be waste to be set in Directives, rather than by comitology as the Commission had proposed. The Parliament’s amendment also specifies that such Directives should be brought forward for compost, aggregates, paper, glass, metal, end-of-life tyres and second-hand clothing.

- **Biowaste**: an adopted amendment would require the Commission to bring forward by June 2008 a Directive to promote the recycling of biowaste.

The European Parliament has not yet formally transmitted to the Environment Council the outcome of its First Reading of the Commission’s legislative proposals. However, some of the amendments adopted by the Parliament may not be acceptable to a majority of Member States in the Council of Ministers. For example, the proposed targets on waste prevention and recycling and the two lists of waste streams, one to be the subject of separate collection and the other to be subject of end-of-waste Directives. On the other hand, the adopted amendment on minimum standards for waste treatment operations is in line with the position of the UK Government, since we are concerned that the introduction of such standards should continue to be properly justified and adopted by means of Directives rather than by “comitology” and without the provision of an Impact Assessment by the European Commission.

The next steps are uncertain, as the Commission has reserved its position on the adopted amendments which were not part of the 97 proposed by the Parliament’s Environment Committee and, as I’ve indicated, the Parliament has also not yet formally transmitted the outcome of its First Reading to the Environment Council. However, we anticipate that the Council will not be able to accept all of the Parliament’s amendments. In the meantime, the Government continues to play a full and active role in the negotiations in the Council Working Groups and the publicly announced aim of the German Presidency is to secure Political Agreement by the end of June 2007. I will of course keep you informed of developments.

14 March 2007
THEMATIC STRATEGY ON THE SUSTAINABLE USE OF NATURAL RESOURCES (5032/06)

Letter from Ian Pearson MP, Minister of State for Climate Change & Environment, Department for Environment, Food and Rural Affairs to the Chairman

Following my appearance before Sub-Committee D of the House of Lords European Union Committee on 12 July 2006, I am writing to update you on the progress of the EU Thematic Strategy on the Sustainable Use of Natural Resources.

Defra sought public views on the recommendations of the Strategy in a consultation document published on 1 August 2006. The consultation closed on 23 October 2006. A total of 16 responses were received, a summary of which can be found at Annex A. You will be pleased to hear that Ministers have since adopted the dossier at EU Environment Council on 30 October 2006.

When I appeared before the Committee, several members were concerned that although the Thematic Strategy made some helpful proposals to improve the evidence base and co-ordinate EU information about natural resources, it lacked substantive, action-orientated proposals. I explained that we expected that the European Commission’s forthcoming EU Sustainable Consumption and Production Action Plan would use the Thematic Strategy as its “intellectual roadmap” and set out substantive proposals based on the findings from that. You will be pleased to hear that I have recently written to Commissioner Dimas to outline the UK’s expectations in this regard.

12 December 2006

Annex A

SUMMARY OF RESPONSES TO THE EU THEMATIC STRATEGY ON THE SUSTAINABLE USE OF NATURAL RESOURCES


The main findings from the consultation responses received by Defra are set out below.

HEADLINE FINDINGS

16 responses to the consultation were received, from which the main findings were:

— All respondents believed that the UK should engage actively with the Thematic Strategy and it’s recommendations;
— The majority of respondents supported the actions set out in the Thematic Strategy;
— The majority of respondents supported the establishment of concrete targets and timelines for the Thematic Strategy. The majority of these responses (as well as those that did not support targets and timelines at this stage) stressed that a strong knowledge base would be a prerequisite.

MAIN SUMMARY

Q1. Should the UK take no action as a result of the Thematic Strategy? Why?

All 15 respondents who answered this question, believed that the UK needed to take action as a result of the Thematic Strategy. Explanations for this included: the Thematic Strategy was in line with currently existing UK Government priorities on sustainable consumption and production (SCP) and natural resource protection; the UK would lose any influencing power if it did not engage; and that the proposed International Panel and Data Centre were particularly valuable pieces of work to be involved in.
**Q2. Should the UK support the actions set out in the Thematic Strategy?**

All 16 respondents who answered this question supported the actions set out in the Thematic Strategy—although four of these respondents stressed that these actions, while beneficial, did not go far enough. Particular issues raised included: the importance of ensuring that the strategy was not a financial or administrative burden on the UK; a proactive approach was needed on UK involvement on the high-level forum and international panel (including from business); the need to develop local and regional strategies for delivery; desire for further information on longer-term actions; the need for a UK based “Data Centre”; and the need for improved indicators.

**Q3. Do you support the setting of concrete targets and timelines for resource use? Why?**

Eleven respondents favoured the setting of concrete targets and timelines for resource use. Of these, five respondents urged that these be set now, four for them to be set at some stage during the Thematic Strategy’s life-span, as our knowledge base improved; one proposed 2008 as a realistic deadline, one proposed 2010, and one stressed that any targets needed to be tailored to local conditions.

Four respondents warned against setting targets at this stage. This stemmed from a belief that the knowledge base was currently inadequate. The Data Centre and the International Panel (once established) were cited as bodies that could set such indicators.

**Q4. What evidence is there to support the setting of concrete targets and timelines for resource use?**

EU environmental policies on climate change and biodiversity conservation, the Water Framework Directive, Organisation for Economic Co-operation and Development and European Environment Agency material on resource flows, the UK’s medium and long term CO2 emission targets, Kyoto targets, water quality and sustainable waste management targets, and the Emissions Trading Scheme were variously cited as evidence to support the setting of concrete targets and timelines for resource use.

**Preferred Option**

Although many responses did not specifically state a preference for a numbered option, by taking the content of the individual responses into consideration

— Six respondents favoured Option 2—supporting the actions contained within the Thematic Strategy;
— A further three respondents favoured Option 2, but moving to Option 3 (setting concrete targets and timetables) once a proper knowledge base was established (the setting up of the International Panel and the Data Centre were singled out as prerequisites
— Seven respondents favoured Option 3, setting up concrete targets and timelines now.

**TOKAJ: GEOGRAPHICAL INDICATION OF WINE (17002/06)**

**Letter from the Chairman to Lord Rooker, Minister of State for Sustainable Farming and Food, Department for Environment, Food and Rural Affairs**

Sub-Committee D considered your EM on the above Proposal at its meeting of 7 February 2007.
We are particularly interested in the topic in the light of Sub-Committee D’s current Inquiry into Reform of the EU’s Wine Sector.
Having noted the contents of the Report, we are content to clear it from scrutiny.

7 February 2007

**TOTAL ALLOWABLE CATCH (TACS) AND QUOTAS FOR 2007 (12518/06, 16050/06)**

**Letter from Ben Bradshaw MP, Minister for Local Environment, Marine and Animal Welfare, Department for Environment, Food and Rural Affairs to the Chairman**

We have now received the Commission’s proposals for the 2007 total allowable catch (TACs) and national quota allocations for certain commercial fish stocks in Community waters and for community vessels in waters where limitations in catch are required—and related measures. These will be discussed and agreed at the
forthcoming December Agriculture and Fisheries Council. I submitted an Explanatory Memorandum (16050/06) on the proposals on 12 December.

Agreement has already been reached on two related dossiers. At the November Agriculture and Fisheries Council there was unanimous adoption of a Council Regulation setting quota limits for deep sea species for 2007 and 2008. These were based on cuts of between 15 and 25% to reflect the very poor scientific prognosis of these vulnerable stocks.

In addition, there was political agreement on TACs and quotas for the Baltic (EM 12518/06 of 11 October 2006) at the October Agriculture and Fisheries Council. A full text was ultimately agreed as an A point earlier this week during Transport Council.

As far as the December Agriculture and Fisheries Council preparations are concerned, the Government has and is continuing to be in close touch with fishermen’s representatives, other interested parties, and with the Commission and other Member States with the aim of developing effective measures to deliver a balance between achieving sustainable fish stocks in the long-term and providing a viable future for the fishing industry.

I very much regret that the proposals are likely to be adopted without prior scrutiny clearance. The Committee is aware of the difficulties caused by the late publication of the annual TAC proposals. I hope the Committee understand the reasons for us taking this course and hope they will accept my apologies for any appearance of discourtesy.

13 December 2006

Letter from Ben Bradshaw MP to the Chairman

I thought you would appreciate a more detailed summary of the outcome of the December Council negotiations from a fisheries perspective.

I am delighted to say that the UK was able to achieve virtually all its key objectives. As far as possible, our line was to follow the advice of ICES and the Commission’s STECF. However, at the same time we sought to provide adequate fishing opportunities to ensure the long-term viability of our own fishing fleet. This process invariably involved a number of difficult balances.

We succeeded in obtaining significant TAC increases for Nephrops in Area VII (including the Irish Sea) and in the West of Scotland of 17% and 10% respectively. These were in line with the advice of STECF and compared with original Commission proposals of no increase and an 8% cut for the two stocks. We were also able to reduce the cut for the North Sea to a more realistic 6% (original Commission proposal—15%).

In addition, we obtained a 10% increase in the Northern shelf (North Sea and West of Scotland combined) monkfish TAC and a sizeable (six-fold) increase in the Rockall haddock TAC in line with the scientific advice. The Commission had originally proposed that a number of TACs be cut simply on the basis of historic underutilisation (implying that the stocks were not there to be caught). We argued that in some cases, the UK had fished its full quota for a particular stock and should not be penalised for a lack of uptake by others. In addition, we explained that there were a number of other reasons for low uptake, including price differentials and the availability of alternative fishing opportunities which would vary from year to year. The Commission accepted our arguments and thus we were able to maintain the existing TACs for a number of stocks including sale in Area Vllh,j,k, megrim in Area VII and the West of Scotland, pollack and haddock in Area VII and Clyde herring.

We also maintained the 2006 TACs for West of Scotland herring in line with the science and the emerging management plan for this stock and for North Sea turbot & brill, lemon sole and dab & flounder to reflect the relative strength of these flatfish fisheries.

In line with our desire to improve the management of elasmobranch species, we supported the setting of reduced TACs for skates and rays and spurdog in the North Sea and their restriction to bycatch fisheries—to prevent the targeting of these vulnerable, slow maturing and low fecundity species. We also approved the introduction of a new bycatch quota for spurdog in other EU waters. In addition, we obtained a Council statement committing the Commission to consider other possible management measures to improve the conservation of these stocks for the future.

On days at sea, we were successful in limiting cuts for our own whitefish fleet throughout the cod recovery zone to between 4% and 5%—thus reflecting the considerable contribution they had already made to effort reduction on cod. At the same time, there were cuts of up to 7% for the beam trawl sector and up to 10% for...
the smaller mesh demersal trawl fisheries. With these latter two fleet segments now accounting for 65% of effort in the North Sea, it is important that they contribute their fair share to reducing pressure on cod. I would have preferred to go further in constraining these gear categories, but unfortunately there was little support for such a robust approach from other Member States.

To further encourage a more sustainable approach to these fisheries, we were successful in gaining a series of concessions linked to the application of selective gear and improved data collection. Those fishermen participating in the pilot Irish Sea enhanced data project—which seeks to obtain, amongst other things, more accurate information on levels of discarding and which has been developed in collaboration between the North Western Waters RAC and the UK and Irish Fisheries Departments—will benefit from extra days (six days for whitefish boats and 12 days for others). Additional days are also available to those using more selective trawl gear in Nephrops fisheries (as developed by the UK). We also expect to gain a further 3 days credit for the more widespread application of scientific observers to monitor fishing activity throughout the cod recovery zone.

Finally, we had hoped to agree a long-term management plan for Western Channel sole, to give the fishermen concerned a stable platform on which to plan for the future. Although this was not possible, we were able to agree a Council statement accepting the principles of such a plan and enshrining a number of key elements—on which we will build this year. In the meantime, the TAC and day limitations set for 2007, were consistent with what we would have expected under the plan.

The Council also included discussion of a possible management plan for plaice and sole stocks in the North Sea. I underlined our commitment to such a plan, but indicated that it was important that its operation did not jeopardise the application of the equivalent plan for cod. The Commission took these comments on board, along with those from other interested Member States and will produce a further revise of the text, incorporating the necessary safeguards, in due course.

The new EU/Greenland Fisheries Partnership Agreement was adopted as an ‘A’ point with no discussion.

15 January 2007

Letter from the Chairman to Ben Bradshaw MP

Sub-Committee D considered, at its meeting on 31 January, your letters of 13 December and 15 January on this subject.

We note your view that almost all your key objectives have been agreed. But we are concerned that the system in place for enabling Parliament to conduct adequate scrutiny is not working as it should. We recognise the difficulties which your Department faces, in receiving detailed proposals from the Commission at very short notice before the December Council. But, as you are well aware, this is a problem which has persisted for some years. Indeed, in our report of July 2005 on European Union Fisheries Legislation we drew attention to the matter and urged the Government to take forward the improvement of the decision-making process as a matter of urgency, and you yourself subsequently wrote to us to say that you were about to submit proposals to the Commission. Yet here we are again with another end-of-year scrutiny override.

We recognise that the situation is not entirely under your control, but I think you will agree that the matter cannot be allowed to continue without improvement. We would be interested therefore to hear what steps you propose to take in this direction.

31 January 2007

Letter from Ben Bradshaw MP to the Chairman

Thank you for your letter of 31 January expressing concern about the continuing inadequacy of the scrutiny surrounding the Commission’s annual proposals for catch limits and related controls.

Given the significant impetus provided by the UK during its Presidency (and thereafter) to improve the Brussels decision-making process in this area, I too was disappointed that, in the event, we did not have sufficient time for more measured consideration of the proposals. We had however provided you with an earlier analysis of what was expected, following the issue of the Commission’s first “strategy paper” last autumn—and this proved to be quite a good measure of what was ultimately proposed. This year, this document should be available even earlier (possibly in April) and ICES are also piloting the release of the science on the various demersal stocks (of particular interest to the UK) in June rather than the traditional October. If the latter is successful, the plan will be to bring forward the science on a number of other “October stocks” in the same way in 2008. This should, in turn, mean that the RACS (which the Commission rightly
consider to be an integral part of the consultation process) have more time to provide their reactions to the Commission ideas (and earlier) and that the Commission will in turn, be able to submit their proposals (at least for certain key species) that much more promptly. This should mean that there is more time for their consideration within Member States—including their scrutiny by Parliament and, as I indicated previously, we will be doing what we can to impress upon the Commission, the importance of this process. I hope that, in the event, this will go a considerable way to avoiding, once and for all, the problems that your letter identifies.

23 February 2007

TRANSBOUNDARY MOVEMENTS OF LIVING MODIFIED ORGANISMS (13078/06)

Letter from the Chairman to Ian Pearson MP, Minister of State for Climate Change and the Environment, Department for the Environment, Food and Rural Affairs

Sub-Committee D considered the above document and your accompanying Explanatory Memorandum dated 5 October 2006 at its meeting on 1 November.

The Committee was content to clear the proposal but has asked to be kept informed of progress. It was not clear to the Committee whether the Cartagena Protocol on Biosafety would prevent a repetition of the spread of infections such as that of the Varroa mite, which was brought from India to Germany and is now spreading to other parts of the world. Your advice on this point would be welcomed.

2 November 2006

Letter from Ian Pearson MP to the Chairman

Thank you for your letter of 2 November 2006 in which you asked whether the Cartagena Protocol on Biosafety would prevent a repetition of the spread of infections such as that of the Varroa mite which was brought from India to Germany and is now spreading to other parts of the world.

I'm afraid that in fact the Protocol would not directly stop the spread of this, or indeed any other, infection. The Protocol exists to regulate transboundary movements of genetically modified organisms, not the spread of infections.

21 November 2006

WINES IMPORTED FROM ARGENTINA (7291/07)

Letter from the Chairman to Lord Rooker, Minister of State for Sustainable Farming and Food, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum dated 29 March 2007 was considered by Sub-Committee D at its meeting on 25 April.

This Proposal provides a good illustration of what we have learned about EU oenological practices in the course of our inquiry into the EU wine sector. The Community is banning wine-making practices which are approved by the OIV but then accepting them either under successive derogations or as part of bilateral wine agreements with third countries. The latest proposal, to extend a derogation concerning the use of malic acid until a wine agreement has been concluded with Argentina, is of itself unobjectionable but it does beg the question of why the use of this additive is banned in the first place. It is also difficult to reconcile this Proposal with the pressure (for example, in the Commission’s 2006 Communication) for a ban on the addition of sucrose to wine—a practice which, we have heard, is important to the UK Wine Industry.

These points having been made, we are content to release the Proposal from scrutiny.

25 April 2007
Law and Institutions (Sub-Committee E)

COMBATING RACISM AND XENOPHOBIA (5118/07)

Letter from the Chairman to Vernon Coaker MP, Parliamentary Under Secretary of State, Home Office

This proposal has been considered by Sub-Committee E.

We welcome the resumption of negotiations on this proposal as we consider that it is important to tackle racism, particularly in cases where this leads to violence and harassment. However, we continue to emphasise the need to ensure that other liberties such as freedom of expression are not excessively curtailed by attempts to fight racism. Do you consider that the present draft Framework Decision strikes the right balance between competing objectives? Given that the Government do not anticipate legislative changes being required in the UK as a result of this Framework Directive, what do they see as the benefits of agreeing the instrument?

Although not raised in your EM, it seems from press reports that there may be some disagreement among Member States as to the proposed scope of the Framework Decision. We understand that some Member States are pressing for inclusion of denial of crimes of totalitarian regimes, including communism, to be included in the text. Has this been discussed in the Working Group and if so, with what reaction has it been met?

What do the Government understand by the term “grossly trivialising” in Article 1? As you know, following the ECJ judgment in Pupino, UK courts will be expected to have regard to the terms of the Framework Decision itself when interpreting the relevant UK legislation. Do you anticipate any problems in ensuring the uniform interpretation of this expression across the EU?

You explain the position in Scotland as regards racial hatred as an aggravating factor in other crimes. What is the position in England and Wales, Northern Ireland and Gibraltar? Would legislative changes be required?

We welcome the Government’s strong support of the exclusions from criminal liability contained in Article 8(1). What is the view of other Member States? Is this provision likely to be agreed in the Council?

You say that the mutual assistance provisions in Article 8(2) were discussed at the JHA Council of 15 February. We would be grateful if you would let us know the outcome of that discussion.

The review procedure envisaged in Article 8(3) is not clearly set out. We would welcome your assurances that any changes proposed to Article 8 once the Framework Decision has been implemented would be submitted for scrutiny in the usual way.

In the context of previous scrutiny of this matter, we drew attention to the uncertainty regarding the scope of the Article 7 provisions on the rights and responsibilities of the media. At that time we were advised that a solution was being sought through clarification in the Recitals. We note that the inclusion of a new Recital 16a but are not convinced that this provides the necessary clarity. Is the intention of Article 7 to allow Member States to limit the liability of the media for racist or xenophobic publications?

We have decided to hold the proposal under scrutiny.

13 March 2007

Letter from Vernon Coaker MP to the Chairman

Thank you for your letter of 13 March summarising the outcome of consideration of the proposed Framework Decision on racism and xenophobia by Sub-Committee E. I will deal with each issue raised in turn.

Like you, we welcome the resumption of negotiations by the Presidency and are keen to ensure that the instrument strikes an appropriate balance between on the one hand tackling racism, particularly where it leads to or incites violence and harassment and on the other freedom of expression. That is why we are insisting on provisions which allow us to exclude certain actions from criminal liability and enable us to impose our domestic criminal threshold. This will enable us to determine the appropriate balance. We are supported in this by a number of Member States and are confident that our negotiations will be successful.

You rightly seek clarification of the benefits to be accrued from a Framework Decision where we anticipate no legislative change, in the UK. We do see a need to tackle racist and xenophobic crime at EU level. It is a regrettable fact that racist crime is a problem across the EU, and the effectiveness of individual national responses is extremely variable. There is increasing migration between Member States, particularly with recent enlargement of the EU. British citizens and residents increasingly work in, and travel to, other Member States.
They have the right to expect that they will receive adequate protection from racial and xenophobic hatred. The Government believes that when a racist or xenophobic crime is committed, the Member State in which the crime was committed should prosecute the perpetrator under its relevant laws, but some Member States currently do not deal effectively with racist crime. We therefore see a real benefit to citizens in setting a minimum standard of protection from racist crime across the EU.

You are absolutely right in you understanding that some Member States have made proposals to increase the scope of this Framework Decision to include, for example, crimes committed under totalitarian regimes. Whilst we have sympathy with that approach we believe that to include these crimes would go beyond what we are seeking to achieve with this Framework Decision. We intend therefore to continue to resist such measures. It is possible that some reference to these will be included in a recital to the text in order to acknowledge the concerns of those Member States, but I assure you that will not affect the scope of the offences in the Framework decision. We are strongly supported in this view by a number of other Member States so we believe all such attempts will continue to be resisted.

You also sought clarification on the term “grossly trivialising”. In the UK we only criminalise behaviour that is carried out in a threatening, abusive or insulting manner that incites racial hatred. The Framework Decision enables us to retain that approach and therefore we will not be obliged to make specific criminal offences of denying, condoning or trivialising the Holocaust or any other war crime. The absence of a specific definition does not affect that outcome. We agree that the Pupino judgment applies, however, that does not change the fact that in implementing third pillar measures we have some discretion under the terms of the Treaty. As you will be aware the legal base of this Framework decision is Article 34(2)(b) of the Treaty on the European Union which states that “Framework Decisions shall be binding . . . as to the result to be achieved, but shall leave to the national authorities the choice of form and methods.”

Turning to how we cover racial hatred in the UK. For England and Wales, our domestic law defines what acts and behaviour are offences: the draft Framework decision and we believe that this is the right approach. To be more specific, the Public Order Act 1986 makes it unlawful to incite hatred in a threatening, abusive or insulting manner against a group of persons defined by race, colour, national or ethnic origin, or nationality (including citizenship). Nine racially-aggravated offences were introduced in the Crime and Disorder Act 1998, which include assaults, criminal damage and harassment, which make available to the courts higher maximum penalties where there is evidence of racist motivation or racial hostility in connection with offence.

The Act also requires a judge or magistrate dealing with any offence that is racially-aggravated to state in open court that they have found it to be aggravated, and merit an increased sentence. The offences also give a higher profile to the racial elements in crimes by requiring the police to look for evidence at the earliest possible opportunity, and by ensuring that the racial element of a crime goes before the jury. For other offences, we have also introduced a requirement for courts to take account of racial or religious motivation in sentencing (Powers of Criminal Courts (Sentencing) Act 2000). I am verifying the position in Northern Ireland and Gibraltar and will clarify as soon as possible.

As requested, I would also like to update you on the progression of negotiations with respect to Article 8(2). The Government has argued for deletion of this provision on mutual legal assistance and we expect a revised draft to accommodate this position.

I fully understand your concern that any changes proposed as a result of review pursuant to Article 8(3) should not bypass due process in Member States. Any proposals to amend the Framework Decision would be subject to the usual Parliamentary process.

As to the provisions in Article 7, these reflect language used in other EU JHA instruments, in particular the European Arrest Warrant (Article 1(3) and the final part of Recital 12 of that Framework Decision). They were proposed by several delegations in relation to this measure to reflect the importance Member States attach to the principles of freedom of speech and expression which are particularly relevant in relation to the offences proposed by this Framework Decision. We support the text since we believe that it will also allow the UK to maintain its unique balance of rights and responsibilities around freedom of speech. The media has a role to play in normal discourse on issues of racism, but they also have a responsibility to report in a way so as not to endanger lives.

Finally, in terms of timetable and next steps, the Framework Decision will be submitted to the JHA Council on 19–20 April. We believe that the Presidency will be looking for a general approach at that meeting, pending submission of the opinion from the European Parliament. I am aware that Parliament is in recess in the
intervening period but I would appreciate your consideration of the outstanding issues on this proposal as a matter of priority so that your views can be factored into any new proposals that are prepared for the April JHA Council.

23 March 2007

Letter from the Chairman to Vernon Coaker MP

Thank you for your letter of 23 March 2007 which has been considered by Sub-Committee E. We found it very helpful.

We agree that while it may be appropriate to legislate in respect of crimes of totalitarian regimes at some point, such an increase in scope goes beyond what the current Framework Decision is intended to achieve.

We note what you say regarding the meaning of “grossly trivialising”. Although the vague nature of this phrase would allow the UK to retain its current approach, there remains a concern regarding how the phrase may be interpreted by other Member States: in some it may be interpreted in too broad a manner leading to a greater interference with freedom of expression. Further, while Member States have some discretion in the implementation of Framework Decisions, we remain of the view that should an ECJ ruling be issued on the meaning of “grossly trivialising” this could require changes to the UK approach. In this context you will have seen the approach taken by the House of Lords to Pupino in the recent Dabas case ([2007] UKHL 6). Is there any prospect of further clarification of the meaning of “grossly trivialising” in the Framework Decision?

We are grateful for your explanation of the current position relating to racially-aggravated crimes in England and Wales and look forward to hearing from you with regards to Northern Ireland and Gibraltar in due course.

We welcome your assurances that any proposed changes to Article 8 under Article 8(3) will be submitted for scrutiny in the usual way.

Your explanation of the background to Article 7 is most helpful. Do you agree that it may be desirable to include a recital to clarify the intention behind Article 7?

We note that you have not responded to our query regarding the support in the Council for the Article 8 exclusions as expressed in the draft Framework Decision submitted to us for scrutiny. Are you in a position to let us know whether these are likely to be agreed by the other Member States? If not, does the UK intend to agree the measure at the April meeting?

We have decided to hold the proposal under scrutiny.

29 March 2007

Letter from Vernon Coaker MP to the Chairman

Thank you so much for your letter of 29 March outlining the consideration of Sub-Committee E of this document. May I say how much I appreciate the Committee making time to consider this important issue and for responding so quickly.

I enclose the latest version of the text, document 8180/1/07 DROIPEN 29 REV 1 (not printed). The Government considers that this latest text represents a very significant improvement on both the text currently under scrutiny and on the version that cleared scrutiny in 2003. I very much hope that you will find time to consider it at your next meeting on 18 April.

Scope of the instrument

The difficulty in agreeing a measure at EU level largely arose from the differences of opinion on the treatment of expression of ideas in different Member States. In particular, this resulted in disagreement over the relationship between the possibility to exclude certain behaviours from wide-ranging criminal liability and the obligation to provide mutual legal assistance. The Government’s position has been that rules on judicial co-operation should not be included in a substantive criminal law instrument, which is regulated by other EU instruments. In contrast, some Member States insisted on retaining the mutual legal assistance provision if it remained possible to exclude certain behaviour from criminal liability.

The Presidency has sought to resolve the difficulty of such differences in approach by narrowing the scope of the Framework Decision to focus on combating certain, more serious forms of racism and xenophobia through the criminal law. Article 1 of the revised text now includes a list of the conduct that all Member States must make punishable, set at a higher, common threshold than previously (in all cases it must be intended to incite violence or hatred) with no possibility for exclusions. Article 8(1) has been deleted.
The Government welcomes this pragmatic approach, which has found support from all Member States as a means of reaching agreement. It focuses the instrument on the most serious conduct and sets common standards across the whole of the EU. Member States may still choose to punish only conduct which is either carried out in a manner likely to disturb public order, or which is threatening, abusive or insulting. As the instrument is now focused only on tackling certain forms of racism and xenophobia through the criminal law, the provision on mutual legal assistance (previously 8(2)) has been deleted.

Value of a Framework Decision

The Government supports the general approach of the Framework Decision. Preventing and combating racism and xenophobia is one of the objectives of the Treaty on European Union, which provides a mandate for common rules in this area. As now drafted, the Framework Decision will ensure that the same serious conduct is criminal across the whole of the EU. The Government considers that the text finds the right balance between freedom of expression and public protection. It is in line with our current domestic law, and will not require us to criminalise racist speech or writing that does not incite violence or hatred.

“Grossly trivialising”

The Government notes that the Committee continues to have concerns about the meaning of “grossly trivialising” and the risk of either another Member State to interpret it too widely, or of the ECJ ruling in a way that requires changes to our legislation. Further clarification of the meaning of the phrase would be highly unlikely to be successful at this stage and given the progress made on the text, reopening debate would be undesirable. However, the Government considers that the amendment to the scope of the Framework Decision to only apply to where conduct is likely to incite violence or hatred, in all Member States, greatly mitigates the risks identified.

Article 7

It is highly unlikely that at this stage we would be successful in securing amendments to the recitals to further clarify Article 7.

Article 8(3) (Review clause)

The review clause previously in Article 8(3) has been deleted and replaced with a more general provision for the Council to conduct a review on the effectiveness of the FD (Article 11(2)). The Government considers this an improvement. It does not single out any particular area for review and does not pre-empt the need for further legislation.

There is one outstanding issue for the JHA Council next week, which concerns the ongoing desire of some Member States to include in the Framework Decision provisions regarding acts committed by totalitarian regimes, such as those that existed during the Communist era. As previously explained, we have expressed sympathy for the argument posed, but resisted amendments along these lines which we do not believe would be consistent with the focus of the Framework Decision on serious racist and xenophobic crimes. We believe that the Presidency will seek to address the outstanding concern with a political declaration on the subject, although we have yet to see a specific proposal.

The Government is satisfied that this latest draft of the Framework Decision represents a good outcome for the UK after years of difficult negotiation and hopes to be able to support agreement of a general approach on the text at the Council, subject to our Parliamentary scrutiny reservation.

12 April 2007

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

Further to Vernon Coaker’s letter of 12 April 2007 on the above dossier, I am writing to clarify the position the UK will take at the forthcoming Justice and Home Affairs (JHA) Council on 19–20 April in Luxembourg. The German Presidency has, as you know, put considerable effort into this dossier, including working hard to address UK concerns, even where those concerns were shared by only a minority of other Member States. I am now satisfied that the current text addresses all of the Government’s points of substance. It therefore represents a real improvement on the earlier version of the text cleared for scrutiny by debate in 2003. In
particular, our concerns that we should not be obliged to amend our domestic law have now been fully satisfied.

Racist or xenophobic behaviour is intolerable in any circumstances but particularly when intended to incite hatred or violence. Our domestic law already reflects this. The current text of this proposal represents the best chance we are likely to see to establish a minimum level of effective, proportionate and dissuasive criminal penalties across the European Union. I would not wish to see this chance wasted, especially given that the Government is content with the substance of the proposal as now drafted. The aims of the Framework Decision send a powerful message to those who would seek to promote violence or hatred against any group of persons, when such behaviour is deployed throughout Europe.

The Presidency has also made it clear that, in the light of the consensus now emerging among Member States, it will not delay seeking a general approach on the text until the next JHA Council in June and intends, instead, to capitalise on that momentum. We therefore fully expect them to push for a general approach this week as we emphasised to me by the German Justice Minister in my own recent conversations with her.

Against that background, as I have previously said, blocking a general approach at this stage would seriously damage our relations with the current Presidency, who have been very helpful on this matter already, and may impact on future negotiations to the UK’s overall detriment.

As outlined by Vernon Coaker in his letter of 12 April the Government is satisfied that this latest draft of the Framework Decision represents a good outcome for the UK. Should the Presidency request a general approach at this week’s JHA Council, the UK will participate, whilst making it clear that, if the dossier has not cleared scrutiny by 18 April, we have a parliamentary scrutiny reserve and that we reserve the right to re-open negotiations should that prove necessary.

Cabinet Office could not see, on the basis of the Government guidance on scrutiny, an obvious reason for the Home Office to prevent the JHA Council on 19–20 April reaching a general approach on the dossier, as long as it is clear that the UK parliamentary scrutiny reserve remains.

17 April 2007

Letter from the Chairman to Vernon Coaker MP

Thank you for your letter of 12 April 2007 which was considered by Sub-Committee E at its meeting of 18 April 2007.

Given the difficulties encountered in the Council as regards exclusions and mutual legal assistance provisions, we too welcome the new approach in the Framework Decision which limits the scope to more serious forms of racism and xenophobia. However, we are concerned by the creation of a new Article 1(1 a) which is less than clear in its aim and likely impact. We assume that its aim is to enable Member States in their implementing legislation to limit further the “intentional conduct” which has otherwise to be made punishable under Article 1(1). But the present language could be interpreted in the opposite sense, or at least as indicating that the thresholds for criminalising conduct under Article 1(1) are lower than would otherwise appear. If intentional conduct has met the threshold of “publicly inciting to violence or hatred” or being “likely to incite to violence or hatred”, what limitation really results from a further restriction to conduct which is “likely to disturb public order” or “threatening, abusive or insulting?” We are particularly concerned that the last two adjectives (abusive or insulting) could, in practice or in the implementing legislation of some Member States, be taken as downplaying the significance that would otherwise attach to the thresholds in Article 1(1). This concern has also to be seen in conjunction with Article 10(2)(b) (jurisdiction of State A in respect of publication in State A by an offender present in State B), and the concomitant possibility of arrest of an offender in State B at the instance of the prosecuting authorities of State A for an alleged offence of racism or xenophobia created and defined by the law of State A.

We continue to support the Government’s opposition to the inclusion of crimes of totalitarian regimes in the present Framework Decision and look forward to receiving further details of the proposed political declaration once a draft has been circulated.

We note what you say as regards further clarification of the meaning of “grossly trivialising”. We remain concerned that interpretations may vary across Member States and although, as you say, the narrower scope of the Framework Decision may go some way to limiting that risk, there is nevertheless a potential problem.

It is unfortunate that Article 7 has not been further clarified in the proposal. While we understand that it would be difficult to revisit the matter at this late stage, we trust that every effort will be made in future negotiations to clarify issues such as this earlier in the process. You do not suggest that clarification in this case would have been particularly controversial.
We strongly support efforts to ensure that adopted EU legislation is operating effectively and consider the new review provisions in Article 11(3) to be a useful addition to the Framework Decision.

We note that you have not yet provided details of the position in Northern Ireland and Gibraltar as regards racist and xenophobic motivation as an aggravating factor in other offences and would be grateful to hear from you on this point.

As we have previously explained, we consider this to be a highly sensitive area and great care is needed to ensure that the right to freedom of expression is not undermined by well-intentioned efforts to fight racism and xenophobia. In the circumstances we do not feel able to clear the proposal from scrutiny at this time. We take the view that Member States should not agree a general approach until the exact extent of and thresholds for offences created under the Framework Decision are resolved. It is therefore disappointing that the UK appears to intend to agree this proposal while it remains under scrutiny in this House.

19 April 2007

COMMUNITY PATENT COURT (5189/04, 5190/04)

Letter from Malcolm Wicks MP, Minister for Science and Innovation, Department of Trade and Industry to the Chairman

Your Committee wrote informally on 6 December 2006 regarding EMs 5189/04 and 5190/04, asking to be kept informed of any significant developments concerning the Community patent, and its relationship with the other proposals for legislative reform of the European patent system: the European Patent Litigation Agreement (EPLA) and the London Agreement on translations. With apologies for the delay, what follows is an update on recent developments.

In January 2006, the European Commission launched a consultation on the future of the European patent system, the main purpose of which was to gauge European support for the Community patent, the European Patent Litigation Agreement, the London Agreement and for alternative legislative solutions such as harmonisation under Article 95 EC.

This consultation showed that there was an almost unanimous rejection of the Community patent as currently on the table in the 2003 Common Political Approach. The main objections were the translation requirements, seen by some as too expensive, reducing accessibility, but by others as too limited, reducing transparency; and the legal arrangements, which many felt would not provide the required levels of legal and technical expertise. The consultation also revealed little mood for further harmonisation of patent law.

There was, however, solid support among both patent professionals and industry for non-EC improvements to the European patent system, through the European Patent Litigation Agreement and the London Agreement.

The London Agreement, which, as you are aware, will reduce the translation burden on patent applicants by almost 50%, has not been approved for ratification by 11 States, including the UK and Germany. However, French ratification is required before the Agreement can enter into force. Despite recommendations from French Senate and National Assembly communities urging their Government to do so, we have been advised that there is no realistic prospect of French ratification until after the French Presidential elections in May 2007.

In September 2006, Charlie McCreevy, Commissioner for the Internal Market, announced a “two pronged” approach to European patents. Firstly, he would seek fresh ideas on how to move ahead with the Community patent. Secondly, he would involve the European Community in the EPLA negotiations. The Commission would issue a Communication setting out their patent strategy in December 2006.

This announcement gave the impression that a green light had been given to the EPLA. Commissioner McCreevy spoke to the European Parliament in late September, discussing how the EC might engage with the EPLA, and how it would ensure that it was compatible with the single market despite its non-EC origins.

The UK government has long supported the EPLA. It will allow patents granted by the European Patent Office to be litigated before a single, shared patent court, reducing the burden of multiple litigation, and increasing legal certainty. It sets high standards of quality, imposes minimal language burdens, and has the respect of industry, judges and legal practitioners, across Europe. We consider that the current draft of the EPLA is one which, following a few amendments to ensure EC compatibility and judicial independence, should be ratified as soon as possible. One major benefit of the EPLA is that it is an opt-in agreement, which need only be ratified by those states which wish to participate in it. This should allow higher standards to be agreed. However, under an EC negotiating mandate, which the Commission insist is necessary in order to
ensure consistency with Community law, participation by all 27 Member States of the EU would be required during its negotiation.

Following the announcement of the Commission's intention to allow Member States to participate in the EPLA, the French Government began circulating a two-page document setting out, in very general terms, a plan for an alternative to the EPLA. This proposal was to set up a similar court structure to the EPLA—regional at first instance with a central appeal, dealing with patents granted by the European Patent Office. The French proposal gained support from Spain, Italy and Portugal: all traditional opponents to the EPLA.

The EPLA supporters, led by the UK, Germany, the Netherlands and Sweden have opposed this proposal on a number of grounds, not least its lack of real detail and apparent legal impossibility under the EC Treaty. Bearing in mind that negotiations on the EPLA began in 1999, it seems unlikely to us that a brand new proposal for a litigation system, which must fit within the already overloaded European court system, could reach the point that it has expert endorsement equivalent to the EPLA in the near future. Furthermore, certain aspects of the French-backed system, such as the language regime for proceedings and the use of national courts at first instance would lead to greater burdens and more uncertainty than the system proposed under the EPLA.

The divisions between EPLA supporters and opponents were highlighted most recently at the Competitiveness Council on 4 December 2006, during which the UK gave a robust defence of the EPLA. The Commission is aware that with the current scale of division no agreement on any way forward can realistically be envisaged, and has delayed issue of its Communication until common ground can be found. The Commission has determined to continue consultation with Member States, in order to find an appropriate path forward, and the UK has indicated a willingness to engage flexibly and constructively. We expect the Communication to be published soon, towards the second half of the German presidency.

If no progress can be made on the EPLA, attention is likely to revert to the Community patent. However, the EPLA is a priority for the German Presidency of the EU, and the Community patent is unlikely to be considered in any detail during this time. In short, there is unlikely to be any progress on either proposal to set up a Community patent court in the near future.

26 February 2007

Letter from the Chairman to Malcolm Wicks MP

Thank you for your letter of 26 February setting out the main developments last year and this relating to the London Agreement and the European Patent Litigation Agreement. This has now been considered by Sub-Committee E. It is regrettable that it was only following a reminder from our Clerk that your Department thought it necessary to respond to the Committee's request set out in my letter of 21 April 2004. As you suggest, we have been aware of the statements made by Commissioner McCreevy and that attention is now being focussed on the EPLA. It is, however, helpful to have a clear statement of the Government's support for this and we are grateful for the information given.

In the penultimate paragraph of your letter you say that there is unlikely to be any progress in the near future on either of the proposed Council Decisions to set up a Community patent court. The Committee has therefore decided to clear the proposals from scrutiny. However, if they are revived we would expect them to be resubmitted promptly under a fresh Explanatory Memorandum.

We would also be grateful if you would keep us informed as to the progress of discussions in the Council on the EPLA. We believe that it is good practice for Departments, when invited to keep the Committee informed of developments, to write at least every six months or sooner where the matter is subject to discussion in the Council.

13 March 2007

COMMUNITY STATISTICAL PROGRAMME 2008–12 (15536/06)

Letter from the Chairman to John Healey MP, Financial Secretary, HM Treasury

This proposal was considered by Sub-Committee E at its meeting of 10 January 2007.

We note that the Programme itself (Annex II, section 3.7) and the European Statistics Code of Practice (Principles 3, 9 & 11) appear to make some provision for the setting of priorities and the reduction of burdens on statistical authorities and business. However, we agree that a requirement for a cost-benefit analysis in certain circumstances would be a useful addition to ensure action at a practical level to address concerns of overburdening.
We are pleased to see that the programme provides guidance on cooperating with other bodies which may be involved in the collection of statistics. Effective cooperation is likely to play a role in reducing burdens and we encourage the Government to maximise possibilities for sharing data and coordinating data collection in future specific legislative proposals.

The proposed legal base for the programme—Article 285 TEC—provides for the production of statistics where necessary for the activities of the Community. The programme includes objectives and actions in the field of crime and criminal justice, which falls under the EU, and not the EC, Treaty. Do the Government accept that Article 285 enables the collection of statistics relating to the Third Pillar?

We have decided to retain the proposal under scrutiny.

11 January 2007

Letter from John Healey MP to the Chairman

I am writing to update you on the position of the proposal for a Decision of the European Parliament and of the Council on the Community Statistical Programme 2008–12, with regard to the considerations of Sub-Committee E (Law and Institutions) at its meeting of 10 January 2007.

Among your considerations you questioned the legal base for the programme, in particular, whether it is the view of the Government that Article 285 TEC enables the collection of statistics relating to the 3rd Pillar.

Issues around crime statistics in the Community Statistical Programme have been raised by UK officials with the Commission. It is the view of the Commission that a reference to the development of crime statistics is fully appropriate in the Community Statistical Programme. It echoes invitations made by the European Council. For example, the Hague Programme, adopted in November 2004, explicitly mentions that “Eurostat should be tasked with the direction of such [crime and victimisation] data and its collection from the Member States”.

The proposal for a Decision on the Community Statistical Programme 2008–12 is still under discussion. Officials from the Office for National Statistics and the Home Office are currently in consultation regarding the issues raised and I will update you on progress shortly.

The European Council Working Party on Statistics is anticipated to next discuss the Community Statistical Programme 2008–12 at its meeting of 3 May.

29 March 2007

Letter from the Chairman to John Healey MP

Thank you for your letter of 29 March which was considered by Sub-Committee E at its meeting of 25 April 2007.

You do not say whether the Government consider that Article 285 TEC is an appropriate legal base for the collection of crime-related statistics. We look forward to hearing your views once the consultation exercise has been concluded.

The proposal is retained under scrutiny.

26 April 2007

COMPANY LAW AND CORPORATE GOVERNANCE (10041/03, 7677/04)

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

I am writing to update your Committee on the European Commission’s review of its Company Law and Corporate Governance Action Plan.

In May 2003, the European Commission launched its Action Plan in its Communication “Modernising Company Law and Enhancing Corporate Governance in the European Union”, On 26 June 2003, the DTI submitted an Explanatory Memorandum (EM 10041/03). Your Committee cleared this EM, by a letter dated 3 July 2003. In December 2005, the Commission completed the short-term phase of the Action Plan, and announced a review of its priorities for the remaining 13 measures due for action in the medium or long term. On 28 March 2006, Gerry Sutcliffe wrote to your Committee giving details of the Government’s comments to the Commission on that review.

1 Correspondence with Ministers, 40th Report of Session 2006–07, HL Paper 187, pp 316–317
In particular, he noted that the Government was questioning whether the case had been made for EU action in relation to the majority of the 13 measures that had yet to be brought forward. In the light of this, the House of Commons Scrutiny Committee asked for information on any cases where measures were dropped from the Action Plan as a result of the Government’s representations. The DTI promised to give this information once the review of the Action Plan had been completed by the Commission.

The outcome of the review was announced by Commissioner McCreevy during a speech at the European Parliament on 21 November. I attach the extract from the speech that deals with the Action Plan. You will see that, of the 13 measures outstanding, the Commissioner has committed himself to legislation on only one—a Directive to make it easier for companies to transfer their registered office from one Member State to another. In addition, he is carrying out studies on two other possible measures, and is reflecting on a third. His statement also mentions two measures not included in the original Action Plan. The first is a simplification scheme to reduce administrative burdens imposed by existing EU companies legislation. The second is the report on auditor liability that the revised 8th company law directive requires the Commission to issue by 1 January 2007. We understand that the Commission will not formally be amending its Communication on the Action Plan. This leaves open the possibility, in theory at least, that other measures will resurface. However, our understanding is that the Commissioner’s statement represents his wish not impose further regulatory burdens on EU companies.

The DTI, in partnership with UK business and investor representatives, worked hard before and during the UK Presidency both to promote a review of the Action Plan, and to persuade the Commission and other Member States that EU measures should be pursued only where necessary to further competitiveness or better regulation principles. I believe that the Commissioner’s statement represents a successful outcome to that work.

12 December 2006

EXTRACT FROM COMMISSIONER MCCREEVY’S SPEECH TO THE LEGAL COMMITTEE OF THE EUROPEAN PARLIAMENT, 21 NOVEMBER 2006

COMPANY LAW AND CORPORATE GOVERNANCE

Company law exemplifies how this policy mix can work. I am determined to give European firms a flexible regulatory framework that serves their needs, rather than imposing unnecessary regulatory burdens on them. And I am committed to making company law a test case of how we apply Better Regulation principles. All initiatives on company law and corporate governance will build on public consultations and be subject to in-depth regulatory impact assessments.

— Firstly, we need to make sure that companies can fully reap the benefits of the Internal Market. Companies should enjoy full mobility within the EU—which is not the case today. For that reason, I have asked my services to start assessing the impact of a Directive enabling companies to move their registered office from one Member State to another. On that basis, I envisage submitting a proposal for a 14th Company Law Directive next spring.

— Secondly, many stakeholders expressed strong support for a Statute for the European Private Company. Your Committee has just voted on a report which also supports this idea. I have asked my services to start work on a study of the feasibility of a European Private Company Statute. We will examine all options for a simple, user-friendly statute which will also meet the needs of small firms.

— However, I am very cautious about introducing a multiplicity of European corporate forms. And I am not yet convinced about the ability of a European Foundation Statute to respond to the specific needs of foundations. Nonetheless, we will pursue our reflection.

— Beyond these individual initiatives, we will launch a simplification scheme to make life easier for companies. We need to simplify the environment in which they operate. We know there still exist unnecessary administrative burdens. We will measure the costs imposed by such burdens and then make proposals on how to remove them. I intend to present a communication on this crucial issue before next summer.

— As you are already aware, I also intend to continue to provoke a lively debate on the issue of proportionality between capital and control of companies.

— Last but not least, there is the separate but linked question of auditor liability. This subject came up last year when we agreed a new 8th Company Law Directive, thanks in large part to the excellent work of Bert Doorn. The Commission agreed to analyse insurability of audit firms and the risk of
loosing of one of the so-called Big Four audit firms. I hope I can rely on your support in work on this issue.

Letter from Rt Hon Ian McCartney MP to the Chairman

I am writing to inform you that I am publishing today consultation documents on implementation of the Directives listed above, following agreement with the Economic Affairs, Productivity and Competitiveness (EAPC) Committee.

I will also be informing Parliament today of the publication of these documents. Copies of them will be placed in the House libraries and will be available on the DTI website.

With particular reference to your letter of 19 January 2006, (Doc 14119/04), in which you asked for a copy of the consultation document on the implementation of the proposed Directive amending Directives 78/660/EC and 83/349/EC concerning the annual accounts of certain types of companies and consolidated accounts (Amendments to the EC Accounting Directives), I am enclosing copies of all these documents for your committee (not printed).

5 March 2007

CONFLICT OF LAWS IN MATTERS CONCERNING MATRIMONIAL PROPERTY

(11817/06)

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

The Green Paper was considered by Sub-Committee E at its meeting on 18 October. We agree with the Government that this is an area of considerable technical complexity and we are pleased to see that the Government are consulting interested parties and that a stakeholder group has been established.

You say that the Government are considering how best to respond to the Green Paper and you promise to keep the Scrutiny Committees informed. We would find it helpful if we could see the Government’s Response in draft. You say that you aim to meet the Commission’s deadline of 30 November. We trust that your timetable would permit the Scrutiny Committees to comment.

19 October 2006

Letter from Rt Hon Baroness Ashton of Upholland to the Chairman

Thank you for your letter of 19 October. You said that it would be helpful for the Committee to see the Government’s response in draft and that you trusted the Government’s timetable for sending the response would permit the Committee to comment. I enclose a copy of the response which we are sending to the Commission. You will see this is a preliminary response and indicates a further paper will be prepared to follow.

The response sets out our general approach to cross-border family law matters and describes the subject matter of the Green Paper. The basic problem as far as UK law is concerned is that we do not have a matrimonial property regime as defined in the Green Paper. This makes it very difficult to determine what the effect of the possible measures that might flow from the Green Paper would be. This is compounded by the failure of the Commission to provide adequate evidence that there is a problem to be remedied. We are therefore suggesting that the Commission examines the evidence properly and makes a greater effort to understand the position of the common law jurisdictions. The response offers the Commission a detailed explanation of the domestic law at a later date. We are planning to invite two academic experts to prepare this paper, which I will copy to you. You may find it helpful in due course to hear evidence from these experts; my officials will provide yours with their contact details when they have been appointed.

27 March 2007

3 Correspondence with Ministers, 45th Report of Session 2005–06, HL Paper 243, p 385
CONTROL OF THE ACQUISITION AND POSSESSION OF WEAPONS (7258/06)

Letter from the Chairman to Vernon Coaker MP, Parliamentary Under Secretary of State, Home Office
Thank you for your letter of 24 July which was considered by Sub-Committee E at its meeting on 11 October. We are grateful for the clear and prompt reply you have given.

We note the importance the Government attach to consistency of approach in relation to the definition of criminal law and penalties under the EC Treaty. As you say, work on the Intellectual Property Directive has effectively been suspended. However, work on the present proposal is at an earlier stage and the nature and substance of the proposal is quite different. You say that “it is clear that negotiations on a number of instruments may now stall and a co-ordinated approach would appear to be sensible”. Would you propose that discussion in the present case proceed on the basis of the deletion of Article 1(3) (containing the new Article 16)? It is likely to be some months before the ECJ gives judgment in Case C-440/05. Why should the adoption and implementation of Article 1(2) (the new Article 4) be delayed in the meantime?

The Committee decided to retain the proposal under scrutiny. We would be grateful if you could keep us informed of developments.

12 October 2006

Letter from Vernon Coaker MP to the Chairman
Thank you for your letter of 12 October about the proposal to amend the directive on the control, acquisition and possession of weapons.

Given our reservations about the legal base for amending Article 1 (3) of the Directive and in keeping with our position on the extent of Community competence in criminal law, the UK is already pressing in current negotiations for the provision containing the new Article 16 to be deleted. It is, however, unlikely that the Commission will agree to such a deletion at this stage. This leaves us at an impasse because, as you are aware, the procedural arrangements in First Pillar leave the initiative with the Commission. During the course of negotiations Member States can only secure an amendment to the text of a legislative proposal against the wishes of the Commission if that view is shared unanimously. Although a number of Member States is likely to support deletion it is doubtful that this view is held by all at present. Like you, we find the situation regrettable but we will certainly use our best endeavours to avoid any prolonged delay if at all possible.

You will wish to known the European Parliament has appointed a rapporteur for the Directive but we do not expect the EP to take a final view before the end of the year.

We will keep the Committee informed of future progress.

31 October 2006

Letter from the Chairman to Vernon Coaker MP
Thank you for your letter of 31 October which was considered by Sub-Committee E at its meeting on 22 November. We share the Government’s concerns and agree that it would be unsatisfactory if amendment of the Directive was postponed pending the judgment of the ECJ in Case C-440/05. On the other hand adoption in the form proposed by the Commission could set an undesirable precedent. You say that a number of Member States share the Government’s concern about the new Article 16. Is there a sufficient number of States to constitute a blocking minority?

The Committee decided to retain the proposal under scrutiny.

23 November 2006

Letter from Vernon Coaker MP to the Chairman
Thank you for your letter of 23 November about the proposal to amend the Directive on the control, acquisition and possession of weapons.

At present a number of Member States are not in favour of criminal sanctions being included in the measure. If these Member States continue to support the UK’s opposition to this aspect of the Directive we believe there would be enough votes to block the measure should this prove necessary.

We will update the Committee with future progress.

12 December 2006

3 Correspondence with Ministers, 40th Report of Session 2006–07, HL Paper 187, pp 337–338
Letter from the Chairman to Vernon Coaker MP

Thank you for your letter of 12 December which was considered by Sub-Committee E (Law and Institutions) at its meeting on 10 January. We were most interested to learn that there are a sufficient number of Member States supporting the Government’s view that criminal sanctions should not be included in the proposed Directive. This is a helpful clarification of the likely extent of the support for the Government’s position. We are also grateful for your undertaking to keep the Committee informed of the progress of the negotiations. The Committee decided to retain the proposal under scrutiny.

11 January 2007

CROSS-BORDER DEBT COLLECTION (14583/06)

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

The Commission’s Green Paper was considered by Sub-Committee E at its meeting on 6 December. We agree with the Government that the availability of procedures making it easier to enforce judgments across borders should bring benefits to both consumers and businesses. But, as you say, if any proposal is brought forward under Article 65 TEC it should only apply to “civil matters having cross-border implications” and should not affect purely national enforcement procedures.

We are pleased to see that the Government are consulting interested parties, including the banking sector, and would be grateful to receive a summary of the results of that consultation exercise and a copy of any Response sent by the Government to the Commission. The Committee decided to clear the document from scrutiny.

7 December 2006

Letter from Rt Hon Baroness Ashton of Upholland to the Chairman

You wrote to me on 7 December 2006 clearing this document from scrutiny but asking for a summary of the results of our consultation exercise and a copy of the Government’s response to the Green Paper. I am pleased to enclose both with this letter and I can confirm our response has been sent to the European Commission.

29 March 2007

Annex A

GREEN PAPER ON IMPROVING THE EFFICIENCY OF THE ENFORCEMENT OF JUDGMENTS IN THE EUROPEAN UNION: THE ATTACHMENT OF BANK ACCOUNTS

RESPONSE FROM THE UNITED KINGDOM

General comments

The United Kingdom welcomes the European Commission’s consultation on this subject. We believe that this is an excellent opportunity to start to consider how we can introduce procedures that not only make it easier to take protective measures in cross-border cases but also allow enforcement of judgments across borders. Such procedures will bring real benefits to both Europe’s citizens and businesses and will be a logical progression from the Brussels I, European Enforcement Order, European Order for Payment and Small Claims Regulations in creating the genuine European area of justice called for at Tampere.

As with any legal process there needs to be a very careful balance between the rights of creditors to recover debts and the provision of adequate protection for defendants. The question of the rights of the defendant is particularly sensitive in this field as the attachment of bank accounts is a measure which has far reaching consequences.

A procedure for the attachment of bank accounts should not only balance the rights of the parties, it should also take proper account of increased administrative and business burdens on banks. For that reason the
United Kingdom particularly welcomes the Commission’s undertaking to carry out an impact assessment. We believe this assessment should analyse the nature and impact of the problems with the current systems operating across the EU, the different options for addressing these problems including an assessment of their likely costs and the effectiveness of each option. This will help to provide an appropriate evidence base for the evaluation of future work in this area.

It will be essential to ensure that European attachment orders are capable of being easily recognised or identified by banks and provided in a language which the bank understands.

Any instrument should also have regard to the international and national law relating to the legal position of banks, including, in particular, the immunity of certain central banks from attachment orders. That immunity should be protected in accordance with, for example, the 2004 United Nations Convention on Jurisdictional Immunities of States and Their Property (General Assembly Resolution 59/38). This links to the more general issue of property belonging to the State and whether it is intended this should be subject to any European attachment order.

Consideration should also be given as to how to handle the liability of banks that fail to comply correctly with an order.

Question 1: Do you see a need for a Community instrument for the attachment of bank accounts as a way to improve debt recovery in the EU? If so, should it create a self-standing European procedure or harmonise Member States’ legislation on the attachment of bank accounts?

The ability to attach bank accounts is a valuable tool for creditors seeking to recover monies owed to them and, subject to the results of the Commission’s impact analysis, the United Kingdom looks favourably on the possible introduction of a European procedure.

There is no legal base that will allow for harmonisation of national procedures but, more importantly, there is no need for such harmonisation. An effective procedure can be based on either mutual recognition of national systems with agreed minimum standards or a single European procedure for cross-border cases. We are prepared to consider an instrument based on mutual recognition but believe that it will be in the interest of those who litigate in many countries and the banking institutions that will receive orders from several Member States to have a single European procedure.

Question 2: Do you agree that a Community instrument should be limited to protective orders preventing the withdrawal and transfer of monies standing to the credit of bank accounts?

The United Kingdom believes that it would be unduly restrictive to limit an attachment procedure to protective measures prior to enforcement. There would be real added value in considering an attachment order as a method of enforcement after judgment where funds can be transferred to a creditor. We suggest that at least at the start attachment orders should be limited to attachment against bank accounts.

However if such orders can be used for both protective measures and enforcement different procedures and protections should be applied. For example, for protective measures prior to judgment more onus should be on the creditor to prove a need to freeze a bank account and the defendant will need stronger safeguards for objection.

Question 3: Should an attachment order be available in all of the four circumstances outlined above in paragraph 3.1 or only in some of them?

We agree that an attachment order should be available in all of the four circumstances listed. However if an order is to be granted prior to the initiation of legal proceedings on the merits of the claim the applicant should be required to give both an undertaking to the court that a claim will be initiated within a specified period and reasons why it is necessary to take urgent action to obtain such an order. Therefore the earliest an order should be capable of being granted is immediately prior to the commencement of proceedings.
Further to our answer to question 2 we believe that it should be possible to have an attachment of bank accounts order after judgment which is a form of enforcement rather than just protective measures.

**Question 4:** What onus should lie on the creditor to persuade the court that he has a claim against the debtor sufficient to justify the granting of an attachment order?

Different procedures should apply depending on whether an application is before or after a judgment has been issued by the court and whether or not the order is for protective measures or for enforcement.

If pre-judgment or post-judgment for protective measures a creditor should have to provide affidavit evidence sufficient to satisfy a court that there is a good arguable case to justify an order being granted. This should set out the facts on which the applicant relies to make the claim. The applicant should be required to include all material facts of which the court should be aware.

Post-judgment for enforcement purposes the creditor should provide a copy of the judgment or court order with details of the total amount of the judgment still owing, including any costs and interest, and known details of anyone else who has an interest in the money.

**Question 5:** Should urgency be a condition for granting an attachment order prior to obtaining an enforceable title? If so, how should this condition be defined?

We believe that it is essential that urgency be a condition for granting an attachment order prior to obtaining an enforceable title. This is to ensure proper protection for the defendant. The applicant should provide information to the court which is sufficient to satisfy it that there is a real risk of the defendant becoming insolvent, that he/she might remove, dispose of or conceal assets or otherwise frustrate the debt if the order is not granted.

It would be useful for the application to include a statement of truth similar to that included in Annex I to Regulation 1896/2006 creating a European Order for Payment—ie the applicant should declare that to the best of his/her knowledge the information provided is true and he/she should acknowledge that any deliberate false statement could lead to appropriate penalties under the law of the Member State of origin.

**Question 6:** Should the court have discretion when granting an attachment order to require the creditor to provide a security deposit or a bank guarantee? How should the amount of any such security deposit/guarantee be calculated?

We also believe that if is essential that an applicant should provide an undertaking to the court to pay any damages which the defendant sustains and which the court considers the applicant should pay. As part of this undertaking we would prefer the applicant to be required to provide details of a bank account from which the security deposit or bank guarantee can be paid. The amount can be set at the court’s discretion, having regard to the loss which the defendant might sustain if the attachment was subsequently set aside as unjustifiable. If a court has doubts about the claimant’s financial standing he/she could be asked to fortify the undertaking by providing tangible security.

Where an order is used post-judgment as a method of enforcement rather than a protective measure such an undertaking is not required.

**Question 7:** Should the debtor be heard or notified prior to the granting of a bank attachment?

In general the defendant should not be heard or notified prior to the granting of an order. Such orders will be less effective if the defendant has the opportunity to move assets before an order takes effect. However it is essential that easily accessible and quick procedures are available to allow the defendant to challenge the order. Consideration should be given as to whether a judge who is not satisfied as to the risk which the creditor asserts should have the discretion to require prior notice to be given to the debtor.

Where an order is used for enforcement of a debt we suggest that a provisional order should be granted without notice to the defendant which freezes the account up to the amount of the debt. A final order to release the money to the creditor should be granted only after the defendant has had an opportunity to be heard by the court.
Question 8: What should be the minimum degree of account information required for the issue of an attachment order?

The applicant should provide the full name of the defendant and, where known, his/her address. At the very least the applicant should provide the name and address of the head office of the bank or similar financial institution at which the assets are held. Although not essential, it would also be helpful where such details are known for the applicants to provide the name and address of the branch of the bank etc. where the account is held, and identifying codes (eg BIC or other relevant code) and the account number of the defendant (eg IBAN or other relevant code). Safeguards should be provided to prevent creditors from undertaking “fishing expeditions” to find out whether the defendant has an account with a particular bank. For example it might be felt that there should be a provision in which the creditor should have to substantiate to the court his/her belief that the defendant has an account at a particular bank.

In addition to the account information it is essential that the amount to be frozen should be specified.

Question 9: Do you agree that the courts having jurisdiction for the merits of the case under relevant Community law and/or the courts where the account is situated should be competent to grant an attachment order? Should the court of the defendant’s domicile always have jurisdiction to issue an attachment, even if it does not have jurisdiction under Regulation 44/2001?

The question as to which courts should have jurisdiction is central to the effectiveness and equity of the procedure. As mentioned above, we believe it is essential that a European system for the attachment of bank accounts should strike the right balance between the rights of the creditor to recover a debt and the provision of adequate protection for the defendant. Protection for the defendant means access to a quick and simple procedure to challenge the order.

While we appreciate the practical difficulties, we believe serious consideration should be given to allowing joint jurisdiction. The court with jurisdiction for the merits of the case under Community law could be responsible for granting an order while a court of the defendant’s domicile, whether or not that is the court with jurisdiction under Regulation 44/2001, could have competence to consider a challenge from the defendant. The need to inform banks of the orders as quickly as possible and in a format they recognise both in terms of language and authenticity and by a method with which they are familiar should also influence the choice of which courts should have jurisdiction. Consideration will need to be given to whether, for example, in terms of speed it would be better for the court with competence under Regulation 44/2001 to both grant and issue the order or whether, as the account to be attached is likely to be in the same Member State as the defendant, it would be better for the banks if the court of the defendant’s domicile had responsibility for issuing the order which had been granted by the court with competence for the main proceedings.

Whichever method is chosen, if the court with competence to consider a challenge from the defendant is a court of the defendant’s domicile it is essential that there is close liaison between that court and the court dealing with the main proceedings to ensure awareness of the order before any challenge is made.

Question 10: Do you agree that the attachment should be limited to a specific amount? If so, how should this amount be determined?

We believe that attachments should be limited to the amount of the debt only (including any interest and court fees). There is no justification in allowing the effect of an order to extend to the freezing of an entire bank account.

Question 11: Do you consider that the banks should be paid for the execution of an attachment order? If so, should the amount to which they would be entitled be capped? Should the creditor have to pay the bank in advance or should the amount due be deducted from the credit balance of the account seized?

With different national practices it will be difficult to get consensus on this issue. It is also likely to produce discrimination for both banks and defendants if for national orders a fee applies but for European orders executed in the same bank there is no fee, or vice versa. It would be preferable to leave this matter to the national law of the Member State where the account is attached. There is a precedent for this solution in the European Order for Payment Regulation (1896/2006) which although an EU-wide procedure leaves the setting of court fees to national law.
Where banks are able to receive payment for the execution of an attachment order it would be easier to administer if this was a fixed sum. However we recognise that where banks are allowed to charge they should be able to recover their reasonable costs. These costs are likely to be greater where a bank has to search for relevant accounts so a scale of fixed charges might be more appropriate. If the creditor is required to pay this fee it will act as an incentive not to initiate unjustified proceedings. These costs could be recovered from the defendant in the event that the claim is successful.

Question 12: If an attachment order is to extend to several accounts, how should the sum to be seized be allocated among each of the accounts?

Where an applicant wishes attachment against several accounts in different banks it is for him/her to apply to the court for separate orders, the total of which should not exceed the amount of the debt (including any interest and court fees). Where the defendant has several accounts in one bank the bank should decide how best to allocate the attachment to those accounts.

Question 13: How should the attachment of joint and nominee accounts be dealt with?

When dealing with joint accounts a balance needs to be struck between the rights of the creditor to pursue a claim or recover a debt after judgment and the rights of the account holder or holders who are not the defendant to have access to their money. A system which does not allow attachment of joint accounts will be much simpler to operate. If joint accounts are to be included there should be a mechanism which allows any holders of the account that are not the defendant or defendants to apply to the court to have released any amounts in the account to which they can show they have a claim.

Nominee accounts should only be attachable where the debtor is the beneficiary rather than the nominee of the account.

Question 14: Should the question whether amounts are exempt from execution be dealt with ex officio when issuing/executing the attachment or should the onus be on the debtor to object on this ground? How and by whom should the amount exempt from execution be calculated and on what basis?

It is important to ensure that a defendant, whether an individual or a business, has the opportunity to seek protection to ensure certain amounts are exempt from execution. We believe it is essential that the amount should be defined and calculated according to the law of the Member State where the order will take effect. Different circumstances apply in each Member State. For example in the United Kingdom state benefits, tax credits and other payments are usually paid into bank accounts. Only local authorities will be aware of these issues. These decisions must be made by judges on application by the defendant. The judge should be able to decide whether any conditions should be attached to the exemption—for example whether the amount of sums to be withdrawn from an account should be agreed before withdrawal between the parties legal representatives or should be subject to court approval.

It should be possible for the defendant to apply to the court on more than one occasion to vary the order on evidence of needs. For the reasons given above we believe that for the protection of the defendant it would be preferable for such matters to be heard by a court in the Member State of the defendant’s domicile.

Question 15: Do you agree that the exequatur procedure should be abolished for the attachment order?

We agree that exequatur should be abolished for these orders but the authorities that grant the order should, at the very least, liaise closely with the enforcement authorities in the Member State of the defendant’s domicile or, preferably, have control of the enforcement of the order, to ensure the defendant is properly protected.

Question 16: How should an attachment order be transmitted from the issuing court to the bank where the account is situated? What time limit should the bank have to respect in order to implement an attachment? What should the effect of an attachment order be on ongoing operations?

It is important to determine first whether there is to be a distinction between the court that grants an order and the court that issues the order. In response to question 9 we suggested that the court that has jurisdiction
for the merits of the case under Community law could be responsible for granting an order but the court with competence to issue the attachment to the bank or other financial institution could be a court in the Member State of the defendant’s domicile. In the vast majority of such cases it will be likely that the bank account will be in the same Member State as the issuing court and there will be advantages for the banks in terms of language and familiarity of procedures. In such cases the method of transmission should be left to national law or procedure.

Where the account is held in a different Member State other than that of the defendant’s domicile the order should be issued and transmitted using Regulation 1348/2000 or an electronic procedure agreed as part of this instrument.

While our preference is for the issuing court to be in the Member State of the defendant’s domicile, if it is decided that another court can issue the order it is essential that it should be sent to the enforcement authorities in the Member State of the defendant’s domicile so that they are aware of the order if the defendant challenges it.

Banks should be under a duty to implement the order as quickly as practicable after receipt of the notification from the issuing authority. Careful consideration needs to be given to the effect of electronic service on the banks not only in terms of authentication and identification of the order but also when the order will be considered to have arrived at the bank. As electronic notification can be made at any time of the day or night any day of the week, if it is sent after normal business hours it would be preferable to treat it as if it had arrived at the bank on the next working day.

**Question 17:** Do you agree that upon receipt of an attachment, it should be the duty of the banks to inform the enforcement authority whether and to what extent an attachment has successfully secured the monies liable to be paid by the debtor to the creditor?

We agree that banks should inform the enforcement authority of the extent to which the order has been applied, including confirmation that the defendant has an account with the bank and whether that account is solely in the name of the defendant or a joint account. However we believe it is important to limit the amount of information the banks can give. First the effect of an order must be limited to the amount of the debt only and should not extend to the entire account. The information should then be limited to the amount of the debt. If the amount in the bank account is less than the debt then the bank should be able to declare the actual amount. If, however, the amount in the account is greater than the debt there is no need for a bank to give details of the full balance and for data protection reasons it should not provide such information.

**Question 18:** When and by whom should the debtor be notified formally that an attachment has been granted and taken effect?

We believe it is important to ensure that a defendant is notified of the order after the bank so that he/she does not have the opportunity to remove their money. We believe that who has responsibility for notifying the defendant should be left to the national law or procedure of the Member State of the defendant’s domicile. As in most cases that will be the same Member State where the account is held it will make it easier for banks who will be able to follow the same procedure for both cross-border and national cases. Together with the notification of the attachment the defendant should receive information about how the order can be challenged. We suggest that the order should be notified to the defendant as quickly as practicable after it has taken effect.

**Question 19:** Should the attachment be revocable or lapse automatically if the creditor does not file the principal action within a specific time period?

As mentioned in our answer to question 3 we agree that it should be possible for an order to be granted immediately prior to the commencement of proceedings but only after an undertaking has been made that the claim will be initiated within a specified period. If the principal action is not filed in that period the order should lapse. The creditor should be able to apply to the court for an extension of time if it is unavoidably needed.
Question 20: On what grounds and to what extent should the debtor be entitled to object to the order for an attachment? Which court should be competent to hear the debtor’s objection against an attachment?

Where an attachment order is made for protective reasons the defendant should be able to object on at least one of the following grounds:

— that there is no real risk of dissipation of the assets;
— that the applicant has not made a full disclosure of evidence;
— that there is no arguable cause for the action;
— that the order was excessive, disproportionate and/or oppressive;
— the money in the relevant account belongs to someone else; and
— that the order is invalid for a specific reason.

When an order is made for enforcement purposes the defendant should be able to object on the following grounds:

— that the order is invalid for a specific reason;
— the money in the relevant account belongs to someone else; and
— that the order will cause undue hardship (e.g., where the funds in the account are state benefits).

We believe that in the interests of justice defendants should be able to challenge a decision as easily as possible. For the reasons given above we believe that serious consideration should be given to allowing defendants to challenge an order in the courts or enforcement authorities in the Member State of their domicile.

Question 21: Should the creditor’s liability in case the attachment proves to be unfounded be harmonised on a European level and, if so, how?

We believe that an applicant should be required to give an undertaking to the court that grants the order that he/she will pay any damages which the defendant sustains. It should be the responsibility of that court to decide the applicant’s liability. The liability should be limited to quantifiable damages that the defendant can prove he/she will sustain or has sustained.

Question 22: Should there be European rules that determine the ranking of competing creditors? If so, which principle should apply?

The ranking of competing creditors should be left to the national law of the Member State where the account is held. However national and European insolvency rules will have to be respected.

Question 23: How should an attachment order be transformed into an executory measure once the creditor has obtained an order which is enforceable in the Member State where the account is situated?

As mentioned before, we believe that this is an ideal opportunity to think about the introduction of an attachment of bank accounts order that is more than a provisional measure and can be used as a method of enforcement. There could be two types of order—one protective and the other allowing enforcement. Creditors would be able to apply for the latter if they have an enforceable judgment/order. The evidence test should be stricter for a protective order.

Where a creditor has a protective order and subsequently obtains an enforceable judgment, rather than allow an automatic transformation we believe it would be preferable for the creditor to make an application to the court for the order to have enforceable effect. Protection measures and enforcement procedures are different processes with the need for different considerations by the court and protections for the defendant. In addition as a protective order might be made early in the proceedings there might be a considerable period of time before judgment is given and it would be preferable for there to be further scrutiny by the court.

Once the order has enforceable effect the defendant should be given the opportunity to object in the way we suggest in our answer to question 7.
SUMMARY OF CONSULTATION

Those Consulted in England and Wales
Advice Services Alliance
Association of District Judges
Bank of England
Bar Council of England and Wales
British Bankers’ Association
Chancery Bench of England and Wales
Civil Court Users Association
Civil Justice Council
Commercial Court Judges
Council of Circuit Judges
Insolvency Service
Institute of Credit Management
Law Society
Office of Fair Trading

Responses Received From
Association of District Judges
Bank of England
Bar Council of England and Wales
British Bankers’ Association
Chancery Bench of England and Wales
Civil Court Users Association (personal response from the Chair)
Commercial Court Judges
Council of Circuit Judges
Insolvency Service
Law Society
Office of Fair Trading

GENERAL COMMENTS
Most consultees mentioned the importance of providing a proper balance between the rights of creditors and protection for defendants. This was particularly true in circumstances prior to judgment which the Association of District Judges thought were right to be severely circumscribed. The Council of Circuit Judges believed that the procedure should be restricted to the higher courts in each Member State. The Chancery Bench thought there was a need for a liberal availability of judicial discretion in the procedure.

The Bank of England mentioned the principle of immunity from attachment of assets belonging to central banks and other procedural privileges attached to central banks and States generally.

The British Bankers’ Association said that a European procedure should not expose banks to additional legal risk such as a liability to the creditor or, if a bank was acting in good faith, a liability to the debtor if the claim or creditor proved unfounded or the account holder misidentified. However the Chancery Bench thought that banks should have a duty to the creditor who had obtained an attachment order.
Question 1: Do you see a need for a Community instrument for the attachment of bank accounts as a way to improve debt recovery in the EU? If so, should it create a self-standing European procedure or harmonise Member States’ legislation on the attachment of bank accounts?

There was general support for the idea of European instrument from the Association of District Judges, the Chancery Bench, the Council of Circuit Judges, the Chair of the Civil Court Users Association, the Law Society and the Office of Fair Trading.

The Bar Council agreed that the ability to attach bank accounts was a useful and valuable tool in civil litigation both pre- and post-judgment but they queried whether a European procedure was necessary now. They suggested that Regulation 44/2001 should be amended and a streamlined and faster administrative process for the mutual recognition of orders should be tried first. The banks wanted to know what difficulties were being experienced under current arrangements and were concerned about the burdens that might be imposed on them. They wanted to see a proper impact assessment from the Commission.

A single European system was favoured by the Association of District Judges, the Chancery Bench, the Law Society, the Chair of the Civil Court Users Association, and, on balance, the British Bankers’ Association. The Council of Circuit Judges, the Commercial Court Judges and the Bar Council preferred harmonisation. However, the latter stipulated it should be only minimum harmonisation.

Question 2: Do you agree that a Community instrument should be limited to protective orders preventing the withdrawal and transfer of monies standing to the credit of bank accounts?

This question was interpreted by consultees in different ways. The Commercial Court Judges, the Council of Circuit Judges and the British Bankers’ Association thought that the orders should be confined to assets in bank accounts. The Law Society saw no reason why it should be limited to bank accounts. The Chancery bench thought that an extension of scope could be considered later.

The Law Society also interpreted the question by saying the order should be limited to protective orders. The Bar Council agreed. The Association of District Judges thought any instrument should be limited to withdrawal and transfer of funds with domestic enforcement law applying thereafter.

The Chair of the Civil Court Users Association thought that preventing the creditor from removing funds would mean the procedure would be incomplete.

Question 3: Should an attachment order be available in all of the four circumstances outlined above in paragraph 3.1 or only in some of them?

Most consultees agreed that an order should be made available in all of the four circumstances listed although if prior to the initiation of the proceedings on the merits of the claim there was concern from some that it should be very close to the initiation of proceedings. However the Association of District Judges opposed the routine availability of orders before the creditor had obtained a court order or judgment. The Chair of the Civil Court Users Association thought all four options were possible but it might be better to start with valid judgments or orders.

Question 4: What onus should lie on the creditor to persuade the court that he has a claim against the debtor sufficient to justify the granting of an attachment order?

There was consensus from the consultees that the creditor should have to satisfy a court he/she had a claim of sufficient substance to justify an order and that there was a real risk of dissipation of the assets. Where an order was requested post-judgment the test did not have to be as high.

Question 5: Should urgency be a condition for granting an attachment order prior to obtaining an enforceable title? If so, how should this condition be defined?

It was agreed by most consultees that urgency was important where there was a real risk of dissipation of assets.
**Question 6:** Should the court have discretion when granting an attachment order to require the creditor to provide a security deposit or a bank guarantee? How should the amount of any such security deposit/guarantee be calculated?

All agreed that the court should have such discretion although there was a difference of opinion as to how the amount should be calculated. The Chair of the Civil Court Users Association thought a sliding scale with appropriate protection might be possible; the Association of District Judges believed that an estimate of the potential loss should be a starting point with a minimum figure of £1,000; and the Chancery Bench suggested a bond of £1,000,000 or three times the amount sought to be attached, whichever was lower.

Others including the Commercial Court Judges, the Bar Council and the Council of Circuit Judges suggested the amount should be left to judicial discretion.

**Question 7:** Should the debtor be heard or notified prior to the granting of a bank attachment?

There was agreement that it would be preferable for the debtor not to be notified prior to the granting of a bank attachment. However some consultees thought there should be exceptions. The Chancery Bench wanted judges to have discretion where they were not satisfied of the risk asserted by the creditor. The Association of District Judges thought that where a defendant had no notice of any proceedings applications for such orders should be made on notice.

**Question 8:** What should be the minimum degree of account information required for the issue of an attachment order?

All who responded agreed that the creditor should provide enough information to identify the defendant—ie name and address and the bank where the account was held. Most thought it unnecessary to require the claimant to provide the account number, sort code and branch address. The British Bankers’ Association was concerned that an order should apply only to accounts held by the bank in the Member State served and that creditors should be able to substantiate a belief that a debtor had an account at a particular bank so as to prevent “fishing expeditions”.

**Question 9:** Do you agree that the courts having jurisdiction for the merits of the case under relevant Community law and/or the courts where the account is situated should be competent to grant an attachment order? Should the court of the defendant’s domicile always have jurisdiction to issue an attachment, even if it does not have jurisdiction under Regulation 44/2001?

All consultees agreed there should be some flexibility in jurisdiction. The Chancery Bench thought that the court adjudging the merits of the case against a defendant would be better informed about those merits whilst the courts of the jurisdiction where the account was held (likely to be the defendant’s own jurisdiction) would be better informed about the account and the harm that an attachment might cause the defendant. They suggested that the court with jurisdiction under Community law, the account holder’s and the debtor’s jurisdictions should each be formally competent to grant orders. The Association of District Judges and Commercial Court Judges agreed and the Bar Council thought all should be considered although the latter and the Chancery Bench questioned whether there should be mixed competence. The Law Society agreed that the court with jurisdiction under Community law should grant the order which could then be issued by the court of the defendant’s domicile.

**Question 10:** Do you agree that the attachment should be limited to a specific amount? If so, how should this amount be determined?

It was agreed by all who responded that the attachment should be limited to the amount it was claimed was owed. Some thought that this amount could include a reasonable amount for costs and interest.

**Question 11:** Do you consider that the banks should be paid for the execution of an attachment order? If so, should the amount to which they would be entitled be capped? Should the creditor have to pay the bank in advance or should the amount due be deducted from the credit balance of the account seized?

The British Bankers’ Association, the Commercial Court Judges, Association of District Judges, Law Society, Bar Council, and the Chair of the Civil Court Users Association thought that banks should be able to make reasonable charges for executing an attachment order. Several thought this should be payable by the creditor and could help to discourage frivolous applications. However the Council of Circuit Judges believed the banks should provide this service without charge as part of their public duties.
Question 12: If an attachment order is to extend to several accounts how should the sum to be seized be allocated among each of the accounts?

There was a range of opinions on this subject. The Chancery Bench thought the amount could be spread over all accounts; the Chair of the Civil Litigation Committee and Bar Council thought that the amount attached could be placed in a specific fund/account and failing that the Bar Council suggested the attachment should apply to all accounts covered by the order. The Law Society said that priority should be given to allocating the amount to be seized to one or more accounts in the sole name of the debtor.

Several consultees emphasised the importance of restricting the amount of the attachment to the value of the debt even where that was spread across several accounts. Where it would be necessary to vary the attachment to accommodate several bank accounts the creditor should have to return to the bank to apply for a change to the order. The Council of Circuit Judges thought that the allocation could be a matter for the court that heard the debtor and possibly the bank after the order had been served.

Question 13: How should the attachment of joint and nominee accounts be dealt with?

Again there was a range of views on this subject. The British Bankers’ Association and the Association of District Judges thought that joint accounts should not be capable of attachment. Others such as the Chair of the Civil Court Users Association thought it was important that joint accounts should be capable of attachment. The Commercial Court Judges and the Chancery Bench thought that orders against the defendant in person could be made in relation to funds to which the defendant was the beneficial owner. The Law Society thought that it should be possible to attach joint accounts on the assumption that each party to the account had an equal share of the assets. The Council of Circuit Judges and Bar Council suggested that the joint holder or nominee should be given the opportunity to make representations to the court. Courts should then have rules to protect the interests of any third parties.

Question 14: Should the question whether amounts are exempt from execution be dealt with ex officio when issuing/executing the attachment or should the onus be on the debtor to object on this ground? How and by whom should the amount exempt from execution be calculated and on what basis?

All who responded on this issue agreed that there should be a provision which allowed exemptions to the order. The Chancery Bench, the Commercial Court Judges, the Council of Circuit Judges, the Law Society and the Bar Council thought that this provision should be made available by the court when the order was granted with the defendant being able to apply for a variation. The Chair of the Civil Court Users Association thought the onus should be on the debtor to apply. The Association of District Judges pointed out that as the average cost of living in each Member State varied it would be unworkable and unjust to expect a judge in a country other than that of the domicile of the defendant to stipulate what should be allowable expenditure. The defendant should therefore apply for exemption to a local court when he/she became aware of the order.

Question 15: Do you agree that the exequatur procedure should be abolished for the attachment order?

There was agreement that there was no need to apply the exequatur process.

Question 16: How should an attachment order be transmitted from the issuing court to the bank where the account is situated? What time limit should the bank have to respect in order to implement an attachment? What should the effect of an attachment order be on ongoing operations?

Electronic notification was favoured by the Commercial Court Judges, the Council of Circuit Judges, the Bar Council, and the Chair of the Civil Court Users Association. The latter said this could be followed by a hard copy. The Chancery Bench thought that transmission should be by any one of the various ways in which service of an order was permitted in the jurisdiction of the bank’s locus. The Law Society said that the attachment order should be transmitted by such means as would guarantee service upon the bank on the second day after posting or transmission.

While some consultees wanted the order to take effect immediately, the British Bankers’ Association, while prepared to accept electronic notification, were concerned if that implied an obligation to act on the order as soon as it was received even if it was outside normal banking hours. They wanted a sufficient time to search and process the order. The Law Society wanted the onus on the bank to deal with the order to be as swift as possible (preferably within 24 hours of receipt). The Commercial Court Judges thought that as the systems at some banks might require more time than others, rather than specify a time limit for implementation banks
should be placed under a duty to implement orders as quickly as practicable. They also thought that the cut-off point should be the debiting of the defendant’s account in the ordinary course of the bank’s business. The Association of District Judges said that any transaction not posted to the account at the time the order was implemented should not be attachable.

The British Bankers’ Association also said it was essential for a European Attachment Order to be easily recognised and identified by banks. Among other things, this meant that a bank would need to receive the order in its own language. They suggested it might be preferable for all orders to be despatched by a central EU agency.

**Question 17:** Do you agree that upon receipt of an attachment, it should be the duty of the banks to inform the enforcement authority whether and to what extent an attachment has successfully secured the monies liable to be paid by the debtor to the creditor?

All respondents agreed that banks should send notification of the implementation of the order although the Chancery Bench thought that rather than to the enforcement authority it should be the creditor and defendant who were notified.

The British Bankers’ Association wanted the information disclosed to take account of issues of banking confidentiality and said it would be essential for banks to be given a realistic period of time to provide the information supplied by the court. Ideally they wanted at least the seven days allowed for third party debt orders in England and Wales.

**Question 18:** When and by whom should the debtor be notified formally that an attachment has been granted and taken effect?

The Association of District Judges, the Council of Circuit Judges and the Chair of the Civil Court Users Association agreed that the defendant should be notified by the court. The Commercial Court Judges and the Bar Council thought notification should be made by the claimant and the court/enforcement authority. The Law Society thought the bank should send the notification. The Chancery Bench said the defendant should learn as soon as is practicable of the order by service either from the court or the creditor, whichever method the domestic jurisdiction used for service of orders.

**Question 19:** Should the attachment be revocable or lapse automatically if the creditor does not file the principal action within a specific time period?

There was a difference of opinion from the consultees. The Chancery Bench and the Bar Council thought that if the claimant had failed to issue proceedings by a given date the defendant should be able to apply to have the order revoked. However the Association of District Judges and the Commercial Court Judges believed that if proceedings had not been commenced by a specified date the order should lapse. The latter said that the claimant should be able to apply to the court for an extension of time if unavoidably needed.

**Question 20:** On what grounds and to what extent should the debtor be entitled to object to the order for an attachment?

There was general agreement on the grounds on which the debtor should be able to object to an order—including there was no proper cause of action, there was no risk of dissipation of assets, a failure to disclose all evidence, the order was excessive, hardship, the assets belonged to someone else and the debt had been paid. Several respondents said that a list should not be prescriptive and that the matter should be left to judicial discretion.

The Chancery Bench, the Commercial Court Judges, the Bar Council and the Council of Circuit Judges thought that the competent court to hear the objection should be the issuing court. The Insolvency Service thought it should be a local court to the defendant.

**Question 21:** Should the creditor’s liability in case the attachment proves to be unfounded be harmonised on a European level and, if so, how?

Only the Association of District Judges and Council of Circuit Judges favoured harmonisation.
Question 22: Should there be European rules that determine the ranking of competing creditors? If so, which principle should apply?

Only the Council of Circuit Judges favoured European rules. The Bar Council, Association of District Judges, Commercial Court Judges, the Chancery Bench, the British Bankers’ Association and the Insolvency Service drew attention to the need to remember the relationship with insolvency rules.

Question 23: How should an attachment order be transformed into an executory measure once the creditor has obtained an order which is enforceable in the Member State where the account is situated?

There was a range of views in response to this question. The Bar Council thought that a distinction should be made between protective orders and enforcement. A court having territorial jurisdiction where the account was situated should have responsibility for execution. The Association of District Judges agreed that a formal application would have to be made to a competent court before any monies could be transferred. The Law Society and Commercial Court Judges agreed the competent court should be in the Member State where the order was functioning. The Chancery Bench said that in order to release monies from the attachment an order should be made by the court. Such an order could be of a kind corresponding to these new rules. The Council of Circuit Judges thought it would be a waste of resources to require a successful creditor to obtain a declaration of enforceability and proceed to enforce in the jurisdiction in which the bank was situated.

DIPLOMATIC AND CONSULAR PROTECTION OF UNION CITIZENS IN THIRD COUNTRIES
(6192/07)

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

This Green Paper was considered by Sub-Committee E at its meeting of 7 March 2007.

We welcome the Commission’s Green Paper as a useful contribution to the debate on how best to implement the provisions in Article 20 TEC on consular assistance.

We are grateful for your detailed Explanatory Memorandum which we found very helpful in identifying the Government’s concerns. You say that there may be issues of subsidiarity and we would be interested to hear your detailed comments on this. Do you consider that EU action should be taken to improve EU citizens’ awareness of the provisions of Article 20? The Commission has identified a significant knowledge gap here, which might be taken as an indication that Member State action in this field has proved inadequate.

Further, we are not convinced that action at EU-level to improve the delivery of the protection afforded by Article 20—for example, through simplification of existing procedures and more effective organisation of services—would necessarily raise subsidiarity concerns. It is difficult to envisage how the objectives of Article 20 can be met by unilateral action, and while bilateral agreements are a possibility might there not be benefits in coordinating an EU-wide approach?

We do, however, consider that some of the Commission’s suggestions may go further than is envisaged under Article 20. In our opinion, there are serious doubts as to whether Article 20 has the effect of creating a Commission duty to provide diplomatic protection, notwithstanding the Odigitria judgment. The suggestion that in the long-term the Commission, on behalf of the Union, might exercise a duty of protection in cases relating to Community competence ought, in our view, to be strongly resisted at this time.

We welcome your support for increased cooperation between Member States’ embassies and Commission delegations in third countries. In our view, common offices could be an effective means of achieving this, provided always that consular officials act under the authority of their States and not under any purported Union authority. We would be interested to hear your views on this. We also consider that the Commission might play a helpful role in improving consular officials’ awareness of EU-related aspects of consular assistance and relevant EU legislation, although we agree that a wider training role would seem inappropriate.

Finally, we are sceptical about the possibility of setting minimum standards of protection for EU citizens. The terms of Article 20 are quite clear: assistance is to be offered on the same conditions as the nationals of the requested State. In our view this does not envisage agreement of minimum standards of consular protection, however desirable it may be at a practical level for EU citizens to have a clear understanding of their rights.

We have decided to hold the Green Paper under scrutiny and look forward to receiving a copy of your response to the Green Paper in due course.

8 March 2007
Letter from Rt Hon Geoff Hoon MP to the Chairman

Thank you for your letter of 8 March 2007 about our response to the EU Commission Green Paper on Diplomatic and consular protection of Union citizens in third countries. I enclose a copy of our response.

The Green Paper contains a number of proposals the Commission believes would more effectively fulfil Article 46 of the Charter of Fundamental Rights of the European Union (TEU) and Article 20 of the Treaty establishing the European Community (TEC). These articles state:

“Every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that State. Member States shall establish the necessary rules among themselves and start the international negotiations required to secure this protection.”

From a legal perspective, there are a number of difficulties with their approach. Firstly, the Green Paper assumes all Member States’ nationals have a legal right to consular assistance. Certainly, under the domestic law of some Member States, such as Sweden and Finland, nationals do have such a right. But in many others, including the UK, France, Germany, the Netherlands, Bulgaria and the Czech Republic, consular assistance is provided as a matter of policy.

Secondly, the Green Paper suggests Article 20 TEC creates a legal right to consular assistance independent of domestic law. We cannot accept this interpretation. Article 20 TEC merely provides for the provision of consular assistance to unrepresented Member States’ nationals on the same terms as it is provided to their own. Nor does it require setting minimum or equal standards for consular assistance amongst Member States.

Lastly, the Green Paper suggests officials from EU institutions may deliver consular assistance themselves in future. Under international law, consular relations are between States. The Vienna Convention on Consular Relations, and applicable bilateral consular conventions, provide a framework for the conduct of inter-State relations; they do not cover the provision of consular assistance by international or intergovernmental organizations. Furthermore, we do not believe that the Commission and the EU have competence under the existing treaties to provide consular assistance.

Further to your other specific question about subsidiarity, we agree that too few Member States’ nationals may be aware of the implications of Article 20 TEC, and agree that efforts by the Commission and Council to improve public awareness are unlikely to raise issues of subsidiarity. Likewise, we welcome efforts to improve co-ordination amongst Member States, and agree this is unlikely to raise issues of subsidiarity. Our concerns for subsidiarity are primarily related to the provision of consular assistance by EU institutions, and particularly the Commission. We believe consular assistance is most effectively provided by Member States themselves.

Notwithstanding these concerns, we share your appreciation for the Commission’s contribution. We support consideration of more effective and efficient ways to deliver consular assistance, including closer co-operation with other Member States. Many of the Commission’s proposals are a welcome contribution to these objectives. Others are unclear and the benefits are not apparent, perhaps as a result of the Commission’s lack of direct experience of consular work. The Green Paper is also unclear on how some of the proposals would be achieved and often fails to take sufficient account of the practical, and legal, realities of consular operations.

Over the past few years, Member States have improved consular crisis co-operation. This has proved extremely effective, increasing our collective capacity to react to crises overseas. A recent example is the evacuation from Lebanon last summer. The UK evacuated nationals from other Member States, who likewise included British nationals in their evacuation arrangements. Based on this success, we believe there is potential to further improve our consular operation by broadening EU co-operation to include more routine consular assistance. This requires a detailed examination of the areas where there is scope for greater co-operation and of the benefits of doing so. Our response to the Green Paper recognises the value of the Commission’s contribution in this respect and, whilst commenting on the difficulties many of the proposals present, seeks to encourage further discussion of these issues amongst Member States.

We have discussed our position with other EU Member States, many of whom share our objectives and concerns. Our views will be further expressed by officials in the open meeting on 31 March as appropriate.

13 March 2007
1. **INTRODUCTION**

1.1 The UK welcomes the Commission’s Green Paper on *Diplomatic and consular protection of Union citizens in third countries*. Our commitment to providing high quality consular assistance is reflected in the UK Government’s current strategic international priorities, the ninth of which reads:

“Delivering high-quality support for British nationals abroad, in normal times and in crises”.

1.2 The UK takes seriously Member States’ obligation not to discriminate against other unrepresented EU nationals in delivering consular assistance. We are acutely aware that, in some parts of the world, delivering consular assistance to British nationals is only possible through the consular and diplomatic networks of our EU Partners. And while providing assistance at times of crisis is only one element of the broad range of activities which make up consular assistance, co-ordination amongst Member States is integral to planning and providing effective responses to crises when they do occur.

1.3 The UK shares the Commission’s objectives of ensuring unrepresented Member States’ nationals know they can seek consular assistance from other Member States’ missions, and of ensuring any assistance provided to them is efficient, effective and non-discriminatory. We are pleased co-ordination amongst Member States has improved in recent years and grateful to the Commission for its consideration of how it might be improved still further.

1.4 Member States provide their consular assistance in a variety of international and domestic legal frameworks. Consequently, it would be useful to set out the basis on which the UK provides consular assistance.

1.5 Firstly, the UK differentiates between consular assistance, passport issuance, notarial services and visa applications. Although these four activities are often performed by the same personnel, they have different legal and policy foundations. The Green Paper is concerned primarily with consular assistance: the provision of assistance by consular officials or diplomatic authorities to nationals in difficulty overseas. The list of activities under Article 5 of Decision 95/553/EC serves as good illustration. Article 20 TEC, to which Decision 95/553/EC and this Green Paper respond, is also concerned with consular assistance.

1.6 Secondly, it is important to recognise diplomatic protection as a distinct legal concept from consular assistance. Consular assistance can be easily confused with diplomatic protection. This may be because consular assistance is often referred to as consular protection, or because it is frequently provided by staff who have both consular and diplomatic functions. Diplomatic protection is formally a state-to-state process by which a state may bring a claim against another state in the name of a national who has suffered an internationally wrongful act at the hands of that other state. Under international law, states may exercise diplomatic protection only on behalf of their own nationals, and not on behalf of nationals of other states. Conversely, consular assistance is the provision of support and assistance by a state to its nationals, or those nationals to whom it has agreed to provide assistance, who are in distress overseas. The vast majority of such cases do not involve an internationally wrongful act.

1.7 Thirdly, British nationals do not have a legal right to consular assistance overseas. The UK Government is under no general obligation under domestic or international law to provide consular assistance (or exercise diplomatic protection). Consular assistance is provided as a matter of policy, which is set out in the public guide, “Support for British Nationals Abroad: A Guide”. Other Member States provide consular assistance on a range of bases, some of which recognise a right to consular assistance under national law, and some of which do not.

1.8 In relation to EU law, Article 20 TEC sets out an obligation of non-discrimination. It requires Member States to treat requests for consular assistance by unrepresented nationals of Member States on the same basis as requests by their own nationals. In compliance with this, the UK provides consular assistance to significant numbers of unrepresented Member States’ nationals. But Article 20 TEC, does not create any right to assistance beyond this. Decisions 95/553/EC and 96/409/CFSP do not affect this position or broaden the basic legal principle set out in Article 20.

1.9 In relation to EU law, Article 20 TEC sets out an obligation of non-discrimination. It requires Member States to treat requests for consular assistance by unrepresented nationals of Member States on the same basis as requests by their own nationals. In compliance with this, the UK provides consular assistance to significant numbers of unrepresented Member States’ nationals. But Article 20 TEC, does not create any right to assistance beyond this. Decisions 95/553/EC and 96/409/CFSP do not affect this position or broaden the basic legal principle set out in Article 20.
2. Information for Citizens

2.1 The UK agrees with the Commission that Member States’ nationals should be better informed about Article 20 and their opportunity, where unrepresented by their own State, to seek consular assistance from other Member States. To this end, we welcomed the General Secretariat’s recent brochure on Decision 95/553/EC. We would encourage the Commission to co-ordinate with the Council to ensure the public is aware of further action pursuant to Article 20. The UK would welcome further details of the Commission’s public information campaign.

2.2 We agree that printing Article 20 in future designs of passports may prove to be an effective means of further disseminating this information to EU citizens. The UK would consider printing Article 20 in the next generation of biometric passports if it is found to be cost effective. This should be considered in the context of the EU Directive on second generation biometric passports.

2.3 Similarly, the UK agrees that the Commission should ensure Member States’ nationals have access to the contact details of the relevant Member States’ posts overseas. However, those Member States with large consular networks, offering higher levels of consular assistance or with a higher profile presence in third states risk a disproportionate burden from unrepresented Member States’ nationals. The UK notes Article 4 of Decision 95/553/EC.

2.4 Without prejudice to Article 1, diplomatic and consular representations may agree on practical arrangements for the effective management of applications for protection.

2.5 Where local agreements are in place pursuant to Article 4, contact details should also provide clear information about which Member States will assist which unrepresented nationals. In such circumstances, efforts should be made to apply local agreements consistently, and to avoid the risk of “consular shopping”.

2.6 Providing timely, accurate and measured travel information is one of the most effective means of helping British nationals to mitigate the risks of travelling overseas. We produce our own travel information covering 219 states and territories around the world, and relay on others states’ travel information on twelve other states and territories. We take a close interest in other Member States’ advice in responding to changing circumstances, and provide links to French, German and Dutch travel information from our website.

2.7 Member States can subscribe to free e-mail updates informing of changes to our travel information. Where we advise against all or all but essential travel to a country or area we inform other Member States by COREU in accordance with standard practice across the EU. This is then published on the COCON website. Similarly, we reflect relevant determinations by international bodies such as the World Health Organisation. The Commission may have a role in helping ensure Member States’ travel information reflects common information where it relates to common EU responses to, for example, pandemics.

2.8 Similarly, we agree with the Commission that Member States’ nationals should be aware that alternative travel information is available from other Member States in other languages. This would be most effectively achieved by establishing links between Member States’ travel advice through a Commission portal. We would welcome the Commission thoughts on how to take this forward.

2.9 But we do not think that common or centrally located travel information would be effective or necessary. Accurate and helpful travel information relies on flexible and responsive updates. Reaching agreement amongst 27 Member States on common travel advice will inhibit our ability to respond to fast moving events. We have on occasion amended our travel information within an hour of it becoming necessary. Moreover, travel advice raises political, intelligence and security issues which are not best discussed in a consular forum.

2.10 Individual Member States are in the best position to advise their nationals on the risks they face and how to mitigate them. Different EU nationalities do not necessarily face the same risks in third countries or benefit from the same advice. These differences can only be captured by the provision of separate travel information.

2.11 Fundamentally, it is to their own Member State that nationals will turn for information and assistance and it is their own Member State to whom they may make further requests or complaints if the information or assistance provided is thought to be inaccurate or unhelpful. We believe the current arrangements for keeping Member States informed of changes to one another’s travel information are the best means to allow Member States to benefit from one another’s knowledge.

3. The Scope of Protection for Citizens

3.1 The UK does not believe the consolidation of consular assistance between Member States is either necessary or desirable. There is no evidence that Member States’ nationals are inconvenienced by the varying levels of consular assistance offered. The only comparison they are likely to make is with the consular assistance they expect to receive from their own Member State. In any event, given the necessary complexity
of consular policy and procedures, and their widely varying legal contexts, the task of agreeing and implementing a common standard of consular assistance would be disproportionate to the benefits achieved.

3.2 As a general matter of policy, the UK does not normally provide consular assistance to non-nationals, including family members of British nationals. UK consular assistance is funded exclusively through passport fees. UK residents make 65 million trips overseas a year and 13.6 million potential British passport holders resident overseas, a significant proportion are related to third country nationals. Extending consular assistance to third country nationals could not be covered by current resources and would not justify a rise in current passport fees.

3.3 There are also legal obstacles to providing such assistance. As discussed in paragraph 5.1 below, a sending state may not normally exercise consular functions in the receiving state on behalf of a third state unless the receiving state has been notified and been given an opportunity to object. In any event, Article 20 only requires non-discriminatory treatment of Member States' nationals, not their family members.

3.4 The UK applies a different, more flexible policy in responding to crises. In a crisis, the UK offers the same level of consular crisis assistance to the third country dependants of British nationals as we do our own nationals, particularly during evacuations, where it is our policy to avoid splitting families. In doing so, we are acting in accordance with the “Lead State” framework, recently agreed in COCON. Where the UK offers to assist an unrepresented Member State, we aim to apply the same policy to their unrepresented national and their third country dependants as we do our own. Of course, this may be impossible where we are unable to evacuate third country nationals because they do not have the right visa status for the destination country.

3.5 Many Member States operate similar policies, with some variations. However, for the reasons stated in paragraph 3.1 above, we do not believe that harmonising this policy across all Member States is necessary or desirable. Instead, we should work together within the Lead State framework to ensure third country dependants of Member States' nationals are provided sufficient consular assistance at times of crisis.

3.6 We share the Commission's concern for the quick and simple identification and repatriation of mortal remains. The repatriation of mortal remains was handled exclusively by international teams following the 2004 Asian tsunami, sparing families the complexities and cost of doing this themselves.

3.7 The UK agrees with the Commission that prompt and accurate identification of mortal remains is a prerequisite for their repatriation. We have encouraged further research and development into DNA identification techniques, CT scanning and electronic scanning and transmission of fingerprints. We thank the Commission for adding its support to these existing efforts.

3.8 The identification of victims of disasters is a highly complex and technical area of work. We work closely with the Interpol Disaster Victims Identification (DVI) Steering Group. It consists of police and practitioners from eight countries with extensive practical experience of DVI and the Interpol DVI Standing Committee. This Steering Group meets bi-annually to maintain the integrity and drive the co-ordination of DVI matters. The Interpol processes are effective and should be supported by Member States.

3.9 The UK has not experienced significant difficulties in providing and being reimbursed for financial assistance to unrepresented Member States' nationals. Whilst, we recognise the Commission’s concerns, it would not be practical for common offices to provide financial assistance because staff would have to administer 27 different kinds of financial arrangements. The current system of providing financial assistance on a non-discriminatory basis is more effective, and is in accordance with Article 20. However, we would welcome the Commission’s views on whether a central clearing house for repayments between Member States would make the current system more efficient. We would also note that while financial assistance should be as efficient as possible, it should not necessarily be made as easy as possible. Having sufficient funds is first and foremost the responsibility of the individual and not his or any other Member State.

4. STRUCTURES AND RESOURCES

4.1 We share the Commission’s objective of ensuring consular assistance for unrepresented Member States’ nationals is provided in as efficient a manner as possible. Member States have made significant progress in the co-ordination of their consular services. The recently reviewed guidelines for co-ordinating consular assistance in third countries, agreed by COCON in 2006, are a good example of this. Some Member States’ consular operations are already co-located. The UK co-locates in Almaty, Ashgabat, Dar es Salaam, Pyongyang, Quito, Reykjavik, Minsk and Chisinau. Co-location can drive down costs and improves co-ordination amongst Member States. Similarly, Member States’ consulates—fully aware of their Article 20 obligations should allocate unrepresented nationals amongst themselves on the basis of resources, language, and so on. Such agreements are best agreed, monitored and adjusted by consulates locally. They are in the best position to assess the needs of unrepresented nationals and identify those best placed to assist them. It is they that can
best react to changing circumstances and demand. As part of its efforts to promote Article 20 amongst Member States' nationals, the Commission might consider maintaining a central record of these arrangements for public enquiry.

4.2 The concept of “common offices” for EU consular work in third countries is not clearly defined in the Green Paper. For example, it is not clear on what basis the level of consular assistance being provided would be set. Would it depend on the nationality of the applicant, the consular officer or a common policy? And would all Member States’ nationals seek assistance from these “common offices”, or just those that are unrepresented? The benefits of such “common offices” are also unclear. They would not, for example, provide any resources savings over co-location. And experience shows that Member States’ nationals will continue to expect consular assistance from consular staff of their own nationality, wherever possible. This is certainly the case for British nationals.

4.3 We would like to note that consular assistance, with which this Green Paper is primarily concerned, should be distinguished from providing visa and passport services. Member States are under no obligation to provide these services to unrepresented nationals on a non-discriminatory basis.

4.4 Member States already co-ordinate their response to crises, as demonstrated by the 2006 crisis in Lebanon—The UK is very grateful to other Member States who have assisted our nationals in such situations. To further develop co-ordination, we should look to the Lead State framework (which the PSC discussed and invited the Consular Working Group to agree the details of in November 2006). This work is being taken forward under the German Presidency. We hope this will encourage better crisis planning in third countries and a more co-ordinated EU response.

4.5 Crisis co-operation must be flexible and fast. We believe the Lead State framework, in which one or several Member States take responsibility for unrepresented EU nationals and one Lead State ensures proper co-ordination (including sharing resources where appropriate) between those on the ground is the most efficient approach. Within this framework, the Commission could usefully provide logistical support when it is requested by Member States, The Council Secretariat could also usefully assist the Lead State(s) by collecting and circulating important operational information, as it did in Lebanon.

4.6 We note the Commission’s offer to facilitate training and best practice amongst Member States. While the Commission has no experience of providing consular assistance itself, it is well placed to organise seminars and conferences amongst experts and officials from across the EU on areas of common concern.

4.7 Similarly, the Commission could facilitate training for consular crises. The UK already invites Member States as observers to our consular crisis training courses. In February, the UK and France staged a joint crisis exercise in Thailand. We would be keen to see more regular exercises.

4.8 However, we are concerned by the suggestion that, in the longer term, the EU should provide consular assistance through Commission delegations. The Commission has no experience in providing consular assistance and we do not believe that EU nationals would receive better consular assistance from the Commission than can be achieved by cooperation among the Member States. Additionally, it is not clear to the UK that there is a legal basis for the Commission to exercise consular functions. The rules and principles established by the Vienna Convention on Consular Relations and customary international law provide for the provision of consular assistance by states, not international or intergovernmental organisations. Although the UK accepts and welcomes the role of the Commission in facilitating co-operation and ensuring non-discrimination in the provision of consular assistance, the Commission has no competence under the EU Treaties to provide consular assistance.

5. THE CONSENT OF THE THIRD COUNTRY AUTHORITIES

5.1 The UK understands the importance of obtaining the consent or acquiescence of the receiving state in providing consular assistance to Member States’ unrepresented nationals. However, whether this requires Member States to negotiate bilateral agreements with third states depends on the agreements and arrangements already in place with the receiving states. For example, Article 8 of the Vienna Convention on Consular Relations allows consular assistance to be provided to non-nationals where the receiving state has been notified and been given an opportunity to object. In our experience, receiving states are generally content for assistance to be provided by other Member States. Consequently, the need for consent clauses in bilateral agreements is unproven in many circumstances.

5.2 However, the UK recognises the value of these provisions in facilitating such assistance. Consequently, we would welcome discussing the possibility of “consular provisions” in the context of any consultations held with the Commission pursuant to Decision 88/384/EC. Of course, it would be inappropriate for any Member State to commit in advance to the inclusion of such provisions. The negotiation of agreements with third states
is complex and difficult. Whilst the inclusion of a “consular provision” may be uncontroversial in some instances, its benefits are unlikely to justify efforts to negotiate it in many others. Moreover, any such provision would be without prejudice to the division of responsibility amongst Member States’ missions for unrepresented nationals.

6. Conclusion

6.1 The UK shares the belief of the Commission that there are opportunities to enhance the co-operation between Member States in their provision of consular assistance to unrepresented nationals. Member States have already implemented a number of initiatives to this end. A comprehensive understanding of the systems already in place is needed before new initiatives can be usefully assessed.

Letter from the Chairman to Rt Hon Geoff Hoon MP

Thank you for your letter of 13 March 2007, enclosing the UK’s response to the Green Paper, which was considered by Sub-Committee E.

We are pleased to see that the views we expressed in our letter of 8 March are, for the most part, shared by the Government.

We note what you say in your Response regarding the establishment of common offices but remain of the view that there may be a case for such action. We will of course consider any Commission proposals in this field most carefully.

As regards the position of third country nationals who are related to Union citizens, the Government’s position is understandable. We are pleased that the UK adopts a flexible approach in crisis situations but we will be interested to see any proposals that the Commission may bring forward.

The Committee decided to clear the Green Paper from scrutiny.

29 March 2007

DISQUALIFICATIONS ARISING FROM CRIMINAL CONVICTIONS IN THE EU (7162/06)

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

Thank you for your letter of 7 August 2006 which was considered by Sub-Committee E we have decided to clear the Disqualifications Communication (7162/06 from scrutiny, at its meeting of 25 October 2006.

We have decided to clear the Disqualification Communication (7162/06) from scrutiny.

26 October 2006

DRAFT RULES OF PROCEDURE—CIVIL SERVICE TRIBUNAL OF THE EUROPEAN UNION (17010/06)

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

The draft Rules of Procedure were considered by Sub-Committee E at its meeting on 7 March. The Committee noted that there are a number of matters on which the Government are seeking clarification. As you may recall from when the Committee examined the Decision establishing the Tribunal, the issue of costs and also of how the possibilities of an amicable settlement of the dispute would be advanced during the litigation are also matters of concern to the Committee. We would therefore be grateful if you would, as the discussions proceed in the Council Working Group, pass on to the Committee the responses of the Tribunal and other information you may receive on these and the other points listed in your Explanatory Memorandum.

The general approach of the Committee to the proposed Rules of the Tribunal, and to those of the CFI, is that the Court should be given a measure of discretion. The autonomy of the Community Courts in relation to their Rules is a matter which the Committee will address in its forthcoming Report on the CBI proposal for an EU Competition Court.

The Committee decided to retain the Draft Rules under scrutiny.

8 March 2007

1 Correspondence with Ministers, 40th Report of Session 2006-07, HL Paper 187, p 339
Letter from Rt Hon Geoff Hoon MP to the Chairman

Thank you for your letter of 8 March 2007 regarding the draft Rules of Procedure of the Civil Service Tribunal of the European Union (document 17010/06).

You raised concerns around the issue of awarding costs by the Tribunal and the procedure for amicable settlements. These points were discussed at the last meetings of the Working Group on 19 February and 19 March.

The UK expressed concerns that the current wording of Articles 59(3) and 86 of the draft Rules of Procedure would discourage individual applicants with genuine complaints from bringing claims before the Tribunal. Article 59(3) gives the Tribunal power to require litigants to lodge a sum to cover witnesses costs. The Tribunal and the Presidency agreed that this provision should be used only exceptionally. Article 86 sets out the general rule on the allocation of costs and is based on Article 7(5) of the Annex to the Statute of the Court of Justice which requires that generally, the unsuccessful party shall be ordered to pay the costs. The Working Group decided not to amend this provision in order to maintain continuity in with the Statute of the Court of Justice. However, the Tribunal will exercise its discretion to allocate costs according to the principle of “equity” set out in Article 86(2).

We also asked the Tribunal whether it had considered creating a power to set out the terms of a settlement agreed out of court in minutes or a court order. The Tribunal has such a power for settlements agreed before the Tribunal under Article 69(1). The Tribunal responded that they had considered this but concluded that out of court settlements were not sufficiently within their control to be formalised by a Tribunal order. They believed it was sufficient that Article 69(2) will require the parties to give their reasons for withdrawing a case when it is settled. The Working group was content with this approach.

The Working Group was content that the Reporting Judge should have a role in negotiating amicable settlement. However, the Tribunal has amended Article 70 to ensure that no information or material obtained during an unsuccessful amicable settlement process can be relied on during the subsequent litigation procedure.

In relation to other areas of concern referred to in the Explanatory Memorandum, the Tribunal has amended its draft Rules and the parties’ views will now be sought before a case is referred to single chamber. The Working Group decided it was content with the rules on intervention and decided that 4 weeks was adequate time for an application to intervene to be made. The Tribunal also explained the distinction between reasoned and non-reasoned orders in its rules. Non-reasoned orders are used in straightforward situations, for example, to accept an institution’s automatic right to intervene. Reasoned orders are used in more complex situations, for example concerning admissibility or suspension of a case which raises similar issues to a case pending in the CFI.

In addition, in response to a request from the Commission, the Tribunal has added a preliminary admissibility procedure (Article 77a) which corresponds to the admissibility procedure in Article 114 of the CFI Rules. The Tribunal has also added a provision (Article 20(5)) concerning the procedure for third party access to the case file, which will be supplemented by Instructions to the Registrar and corresponds to the procedures in the CFI.

We agree with the Committee that, consistent with the Rules of Procedure of the other European Courts, the Tribunal should be given a measure of discretion, and are satisfied that the final version of the RoP will achieve this.

The Presidency will circulate a final copy of the letter to be put to COREPER in April, for adoption as an A point at the Justice and Home Affairs Council on 19 April. I hope that this information will allow the Committee to complete its scrutiny of this document before the JHA meeting.

29 March 2007

Letter from the Chairman to Rt Hon Geoff Hoon MP

Thank you for your letter of 29 March which was considered at its meeting on 18 April. The Committee was grateful for the further information provided and decided to clear the draft Rules from scrutiny.

19 April 2007
EU STRATEGY TO MEASURE CRIME AND CRIMINAL JUSTICE (12345/06)

Letter from the Chairman to Rt Hon Baroness Scotland of Asthal, Minister of State, Home Office

This Communication was considered by Sub-Committee E at its meeting of 1 November 2006.

The Committee welcomes this initiative to collect reliable data in the field of crime and criminal justice in cooperation with other EU and international bodies. We have in the past been concerned by lack of statistical data to support proposals in this field and trust that the Government will cooperate fully with the Commission and other Member States to maximise the comparability of data across the EU. Would there be any difficulties for the UK with the Commission’s proposal to require Member States to provide statistics in an appropriate form when future legal instruments on crime are drafted?

We note that the Action Plan refers to the establishment of “an inventory of EU harmonised definitions of crime types” and of “law enforcement measures” (Point 3). What is envisaged here? Are efforts to achieve harmonised definitions (eg of “drug-related crime”) likely to be successful?

We are also interested to hear that Eurostat has commenced collection of crime statistics in line with the Action Plan. Has specific Union funding been made available to Eurostat for this purpose?

We have decided to hold the Communication under scrutiny.

2 November 2006

Letter from Rt Hon Baroness Scotland of Asthal to the Chairman

Thank you for your letter of 2 November 2006 and your support for this project. I agree that this initiative should be welcomed. My officials have been closely involved in the work that resulted in the Action Plan and this involvement is planned to continue. This will include membership of both the proposed Expert Group to be set up under the Action Plan and through a Working Group being set up by Eurostat. I understand that the first meetings of both groups are planned for February/March 2007. In relation to the other points raised:

(a) My department (and those of the other parts of the UK) have already supplied data to Eurostat to meet their current requests. The involvement of my officials in these discussions should ensure that future requests are realistic both for the Home Office but also criminal justice agencies in this country.

(b) The aim of Action Point 3 was that Eurostat should carry out a survey on both the legal definitions and statistical rules currently used by Member States for both crime and criminal justice statistics. The intention of this survey is to see whether common definitions apply among Member States. In practice Eurostat will be using the information published this summer in the 3rd edition of the European Sourcebook of crime and criminal justice statistics (www.europeansourcebook.org). The Sourcebook report was part funded by the Home Office.

(c) The Eurostat work on crime and criminal justice statistics is part of the agreed statistical work programme for the European Union and as such some resources in Eurostat are being made available. In addition, the Commission have also given Eurostat additional funding for three years to employ an expert in this area to support their work.

20 November 2006

Letter from the Chairman to Rt Hon Baroness Scotland of Asthal

Thank you for your letter of 20 November 2006 which was considered by Sub-Committee E at its meeting of 6 December 2006.

We are pleased to hear that you are satisfied that future requests for statistics are unlikely to pose any problems for the relevant UK authorities.

You say that Eurostat will undertake a survey to see whether common definitions apply among Member States. Is the long-term aim the agreement of common definitions where possible? We note that Action Point 5(10) refers to the development of a common definition of “drug-related crime”. We assume the Government are in favour of common definitions. If not, how do the Government consider that useful statistics can be collected?
We are aware that statistics are also collected by the Council of Europe, especially by the European Commission for the Efficiency of Justice. What coordination will there be with the Council of Europe, in particular to avoid duplication and inconsistencies?
We have decided to hold the Communication under scrutiny.

7 December 2006

Letter from Rt Hon Baroness Scotland of Asthal to the Chairman

Thank you for your letter dated 7 December 2006 which followed my earlier reply dated 20 November 2006. In relation to the two points raised:

(a) The initial function of the survey will be to see whether there is any comparability between the definitions of offences for Member States. Any future comparisons will be made within this context and constrained by the different legal systems in Member States. Alternative approaches such as the use of surveys where common definitions are possible are also being explored by Eurostat. The Government is clearly in favour of such work within these constraints.

(b) My officials were not directly involved in the production of the two reports by the European Commission for the Efficiency of Justice. However they were able to express their concerns about the first report which we were glad to see were taken account of in the second edition. Our comments were on the need to fully take account of differences in definitions of country indicators in any comparisons. Good coordination normally exists between those involved in such initiatives due to the coordinating role of the European Sourcebook Group which includes, for example, the academic responsible for the Efficiency of Justice publication and also for the Council of Europe penal statistics. Eurostat and the UN are also observers at these meetings.

29 December 2006

Letter from the Chairman to Rt Hon Baroness Scotland of Asthal

Thank you for your letter of 29 December 2006 which was considered by Sub-Committee E at its meeting of 17 January 2007.

We note the Government’s position as regards the agreement of common definitions. But our question remains: how do the Government consider that useful statistics can be collected in the absence of common definitions?

As regards the matter of coordination of bodies, your letter appeared to point to coordination within the Council of Europe and its Member States, rather than any coordination between the Council of Europe and the EU. You say that Eurostat is present at some meetings; we presume you are referring to meetings of the European Sourcebook Group and would be grateful for further clarification of the nature and frequency of these meetings. What level of EU involvement is there in the collation of Council of Europe statistics, and what level of Council of Europe involvement is expected in the collation of EU statistics under this Strategy? Is there a coordinating body involving representatives of both the Council of Europe and the EU?

We have decided to hold the Communication under scrutiny.

18 January 2007

EUROPEAN ANTI-CORRUPTION NETWORK (15629/05)

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

Thank you for your letter of 1 August 2006 which was considered by Sub-Committee E at its meeting on 11 October. We are pleased to see that the Government share some of the concerns raised by the Committee but there are a number of points outstanding and though we note you request that the UK scrutiny position should reflect the Government’s support for the proposal we are not yet in a position to clear the Council Decision from scrutiny.

On the relationship between the proposed network and EPAC, you say that “the UK would like to table a proposal to add a paragraph into the recital to explain that the Network will build upon the work of EPAC and shall not duplicate its duties”. Have you tabled such a proposal? If so, what did it say and what reception has been given to it by other Member States and the Commission?

Thank you for providing a new text of Article 3. We note that this provision has been substantially simplified and shortened. We note that, in paragraph 2, “on a voluntary basis” has been replaced by “in accordance with existing international arrangements”. What are the arrangements to which reference is made and how might they affect members’ freedom to participate in the network?

We note that wherever the word “organisations” appears it is now followed by the words “and services”. It seems that in some instances the “services” referred to are those existing in Member States (eg para 2(b) second indent) while in other cases the services are those of the network. What are the “services” of the network? Are they defined elsewhere in the Regulation? What in practice will they comprise?

We are pleased to see that you agree that a financial statement should be provided and that you have promised to send a copy to the Committee “when one is made available”. What efforts have the Government made to ensure that a financial statement is made available in good time before the conclusion of negotiations and adoption of the proposed Decision?

Finally, you say that the location of the secretariat remains uncertain. It appears that the Government have no strong views as to whether or not the secretariat should be situated within OLAF (in effect the Commission). But is not the location of the secretariat (and the network) significant if it is to have and/or provide “services” as envisaged by Article 3? Are there not budgetary and control considerations here?

The Committee decided to retain the proposal under scrutiny. We look forward to receiving the further information requested above.

12 October 2006

**Letter from Gerry Sutcliffe MP, Parliamentary Under Secretary of State, Home Office to the Chairman**

Thank you for your letter of 12 October to my colleague Joan Ryan MP regarding the setting up of a European Anti-corruption Network.

The UK still believes that the relationship between the Network and the informal European Partners Against Corruption (EAPC) should be clarified in the recital. Unfortunately an opportunity to present this proposal has not arisen, as the proposed Council Decision has not been discussed at the MDG since June or at CATS since May. However we will suggest that a recital point should be inserted that will clarify this issue at the next opportunity.

You refer to the insertion of “international arrangements” in Article 3. At the next opportunity the UK will seek clarification of the exact meaning of this text, and I will make sure that your Committee is informed.

“Organisations and services” of the Network are those organisations and services that currently exist in the Member States that will eventually form the Network. This is not a reference to new services that the Network will perform or that will be provided by the Network. Nor is it meant to describe any new services that will be created as a result of establishing the Network. It instead refers to the anti-corruption services that will create the Network.

The Government is still keen to see a financial statement produced. Unfortunately, as I have explained above, an occasion has not arisen whereby the UK has been able to request one. At the next MDG where the Network is discussed the UK will enquire after such a statement. Again, I would reiterate that the running costs of the Network are not expected to be substantial., and the lack of a financial statement should not prevent the UK from supporting the Network.

Finally, the location of the Network’s secretariat should not have a bearing on its services, as I have explained above. The location of the secretariat has not yet been decided but I will make sure that your committee is made aware of the final decision once it is reached.

The Network, which was an Austrian initiative, has not been discussed in the working group for a number of months. The Finnish Presidency has so far decided against putting it on the EU agenda. The UK recognises that working groups are extremely busy and that their time is valuable. However, we remain supportive of the proposal and will continue our qualified support for it if and when the proposal returns to the negotiation table.

15 November 2006

**Letter from the Chairman to Gerry Sutcliffe MP**

Thank you for your letter of 15 November which was considered by Sub-Committee E at its meeting on 29 November. We note that the Network is not presently under active negotiation and in these circumstances we accept that the Government may not be able to respond fully to the Committee’s requests for information and
clarification. If and when the proposal returns to the negotiating table we would be grateful if you would provide the Committee with the following:

(i) a copy of the Recital clarifying the relationship between the Network and EPAC;
(ii) clarification as to what is meant by “international arrangements” in Article 3;
(iii) a financial statement relating to the establishment and running of the Network; and
(iv) details of the proposed location of the Network.

The Committee decided to retain the proposal under scrutiny.

30 November 2006

EUROPEAN ANTI-FRAUD OFFICE (OLAF) (11281/06)

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

The proposed Regulation was considered by Sub-Committee E at its meeting on 11 October. As you recall, the Committee examined the Commission’s previous proposal in detail: Strengthening OLAF, the European Anti-Fraud Office (24th Report, 2003–04). We were therefore particularly interested to see what changes the Commission has made in the light of recent developments, including the report prepared by the Court of Auditors.

In your Explanatory Memorandum, you draw attention to a number of objectives of the Commission’s new proposal. In relation to governance and cooperation between the institutions and the Supervisory Committee, we note that the Commission now sees the need for political governance of OLAF’s priorities and that the new Article IIa would provide for a “structured dialogue”. It seems that in future OLAF would not be free to set its own policy priorities. Could this have consequences for whether or not to open investigations in particular cases? Do the Government agree with this change and what effect will it have on OLAF’s current “zero tolerance” policy?

Article 7A sets out a number of procedural guarantees. You will recall that in your examination of the earlier proposals we expressed concern that Article 7A should include a statement of the right to legal assistance and to interpretation/translation services. The latter appears to have been dealt with by reference to the use of an official Community language of which the party has “a thorough knowledge”. Do you agree that Article 7A should make an express reference to the right to legal representation?

In relation to the objective of strengthening the review of investigations, we are pleased to see that the Commission has dropped its idea of extending the role of the Supervisory Committee and proposes the appointment of an independent Review Adviser. As our Report indicated, this would seem a much better approach.

The proposal contains a number of provisions aimed at improving the flow of information between OLAF and EU institutions, between OLAF and Member States, and between OLAF and so-called “informed”. As you recall, when we considered the earlier proposal, we were particularly concerned that as regards internal cases the Director General of OLAF should be given greater freedom so as not to prejudice the conduct of the investigation. We are pleased to see that you share this view and we hope that the Government will press this point strongly during the negotiations.

We note that the changes proposed to improve the effectiveness of OLAF’s investigations follow those in the earlier text. In our 2004 Report we agreed with the Government that it would be necessary to ensure that any new powers do not impair the ability and right of national agencies to conduct their own investigations. Are you content that the new text is satisfactory in this respect?

The Committee decided to retain the proposal under scrutiny.

12 October 2006

Letter from Ed Balls MP to the Chairman

Thank you for your letter of 12 October about my Explanatory Memorandum on this proposal. I am sorry for the delay in responding to the queries you raised.

You were concerned that the new Article IIa might not leave OLAF free to set its own policy priorities in future. I agree that this is a risk. In Council discussions, a number of Member States have stated that they do not see why it is necessary to have this “structured dialogue” with the institutions. The Presidency has now suggested that this article be deleted from the proposal, so there would be no effect on OLAF’s “zero tolerance” policy.
Article 7a concerns “procedural guarantees”. I agree that this article should refer expressly to the right to legal representation, and we will continue to press for this to be included.

I am pleased that you consider the appointment of a Review Adviser to be a better solution than the original proposal to extend the role of the Supervisory Committee. In recent Council discussions on the revised proposal, the Presidency has now suggested that OLAF should appoint a “Hearing Officer” for each case, akin to the function present in EU competition regulations, either as well as the Review Adviser (which they suggest should be re-titled “Investigations Ombudsman”). The function of the “Hearing Officer” would be to ensure that the impartiality and objectivity of the investigations and other procedural guarantees are effectively respected in the investigations of the Office. Your Sub-Committee E can take the credit for this proposal, from their report “Strengthening OLAF, the European Anti-Fraud Office” (HL 139). The function of the Investigations Ombudsman would be to rule on appeals or complaints.

As you know, I share your view that the Director of OLAF should be allowed to exercise some discretion on when to notify bodies that an internal investigation is being carried out. We have proposed alternative text for Article 5A (c).

I agree that there is a need to avoid impairing the ability and right of national agencies to conduct their own investigations, but this has to be balanced against OLAF’s own need to conduct effective investigations. I am not aware that this has caused any problems to date, and the proposed revisions to the Regulation would not seem to make this any more likely in future. The regulations currently in force clearly distinguish between OLAF’s role in internal and external investigations. As you are aware, the original proposal to revise Article 3, on external investigations. Paragraph 3 of the proposal cross-referred to Article 4 (2), which gives OLAF the right to immediate and unannounced access to the premises of institutions, bodies, offices and agencies of the EU; and to Article 4 (4), which ensures that OLAF informs the bodies in question. While there was some concern initially that the proposed amendments would extend OLAF’s rights of access in Member States, I do not now believe that this is the case. The evidence given by OLAF to Sub-Committee E’s inquiry, and noted at paragraphs 52 and 56 of HL 139 goes some way to addressing these potential subsidiarity concerns. In addition, the addition of the words “for that purpose” to Article 3 (3) in the revised proposal, makes it clearer that the cross-reference to Article 4 (2) will not apply directly to external investigations, but to relevant information held by the institutions etc. For example, if OLAF, while investigating a case in a Member State, wishes to see relevant information held by the Commission, they will have “immediate and unannounced access” to the latter. It is also worth remembering that OLAF’s investigations are of course only “administrative” investigations and they will normally pass their findings to the appropriate authority to take further action, which may include an investigation of its own.

23 November 2006

Letter from the Chairman to Ed Balls MP

Thank you for your letter of 23 November which was considered by Sub-Committee E at its meeting on 13 December. We are pleased to see that the Government and the Committee are at one on a large number of issues raised by the Commission’s proposal and have decided to clear the document from scrutiny. We would be grateful if you would keep us informed of developments and, if any material change is made to the proposal, you would deposit the new text and submit a further Explanatory Memorandum.

14 December 2006

EUROPEAN ENFORCEMENT ORDER AND THE TRANSFER OF SENTENCED PERSONS

(5597/05, 13080/06)

Letter from Rt Hon Baroness Scotland of Asthal, Minister of State, Home Office to the Chairman

When I last wrote to you on 28 September 2005 I indicated that I would keep you informed of developments relating to the EU prisoner transfer proposals. I have today deposited an Explanatory Memorandum on the revised draft of the agreement, Council Document 13080/06.

You may wish to note that the title of the dossier has now changed. The dossier is now known as the Council Framework Decision on the application of the principle on mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their

6 “The Director-General of OLAF may decide when to inform the institution, body, office or agency, which shall take any precautionary or administrative measures that are required, with due account being taken of the importance of guaranteeing the effectiveness of the conduct of the investigation and of the specific confidentiality measures recommended by the Office”.

enforcement in the European Union. The Presidency is hoping to agree the adoption of this Framework Decision by the end of the year.

In your last letter you asked to be kept informed of discussions relating to Article 13(4) of the draft proposals. In particular, how this would affect the release arrangements of those prisoners transferred from the United Kingdom.

Article 13(4) as it was originally drafted required the executing State to take account of the release arrangements of the issuing State. It was not clear from the text how this paragraph was meant to work. It became clear during the discussions of the Working Group that taking into account the release arrangements of the issuing State was not acceptable to a number of Member States. They believed that once transferred the sentence should be administered in accordance with their own domestic release arrangements. As a result of these discussions, Article 13(4) has been amended. It now enables Member States to provide in their implementing legislation, if they wish to do so, for a power to take into account the release arrangements of the issuing State.

If a Member State chooses to take this power then it is unlikely that a prisoner transferred from the UK without consent will be required to serve longer in custody than would otherwise be the case here. Where however, a Member State chooses not to implement this option, and where domestic release arrangements are less favourable than those in the UK, a prisoner may well find himself serving a longer period in custody as a result. As you may know, the European Court of Human Rights ruled in the case of Veermae that an increase in the custodial element of a sentence did not breach a prisoner’s rights under ECHR, although it did not rule out a breach occurring if the prisoner was required to serve a flagrantly longer de facto sentence following transfer.

Although it is possible that a prisoner may be required to serve longer in custody as a result of transfer, the Government nevertheless believes that it is normally in the best interests of a prisoner that he should serve his sentence in his country of nationality or the country of residence. The prisoner is likely to return there on release either voluntarily or following deportation. Transfer during the course of the sentence would enable the prisoner to undergo appropriate offending behaviour and rehabilitation programmes and prepare himself properly for release into the community in which he will live.

In determining whether a prisoner should be transferred under this Framework Decision, the Government would consider each case on its individual merits taking into account the views of the prisoner, the effect of the transfer on the prisoners release arrangements, and the ruling of the European Court.

2 October 2006

Letter from the Chairman to Rt Hon Baroness Scotland of Asthal

Thank you for your letter of 2 October and your recent Explanatory Memorandum on this subject. The revised proposal was considered by Sub-Committee E at its meeting on 22 November. As you will be aware, the Committee has held this proposal under scrutiny for nearly two years and there has been substantial correspondence between the Committee and your Department. We would like to put on record our appreciation for the candour with which you have explained the Government’s position.

It will not surprise you to learn that the Committee remains concerned about a regime, however designated, which would enable prisoners to be transferred without consent except in circumstances where it is generally recognised that this would not contravene human rights (for example following deportation proceedings or where the prisoner has fled the jurisdiction). Under the Framework Decision, the prisoner would have the opportunity to express his or her opinion. You have confirmed that the Government would have regard to this opinion and that there would be the right of judicial review when ECHR arguments could be raised. We invite the Government to reconsider whether any implementing legislation should state explicitly the right of appeal.

Also, when implementing the Framework Decision we believe that the Government should reconsider the position as regards double criminality, a matter which we understand our sister Committee in the House of Commons has also raised with you, and in addition consider the question of release arrangements. As regards the latter, we note that Article 13(4) enables an executing State to take account of early or conditional release arrangements indicated by the issuing State. Consideration should be given to the position both where the UK is the executing State and where it is the issuing State.
You say that the Finnish Presidency hopes that the Framework Decision will be adopted at the JHA on 4–5 December. In these circumstances and subject to the points made above, the Committee decided to conclude its scrutiny of the proposed Framework Decision and its predecessor (Docs 13080/06 and 5597/05 respectively).

24 November 2006

EUROPEAN ORDER FOR PAYMENT PROCEDURE (7615/04, 6133/06)

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

I am writing to inform you about the latest developments in the negotiations of this proposed Regulation. A Council Common Position was adopted under the Austrian Presidency. The text, which I enclose for your information, in all but one respect follows in substance the Commission’s amended proposal of 9 February 2006 (Document 6133/06) although there have been some drafting amendments following consideration by the jurist-linguists. The main difference between the texts is the definition of cross-border in Article 3. The Commission’s text refers to at least one of the parties having to be domiciled or habitually resident in a State (rather than a Member State) other than the Member State of the court seised. However, as I explained in the Explanatory Memorandum to 6133/06, we did not expect the Commission to pursue this point. As anticipated the definition agreed at the December Council last year was retained for the Common Position.

Since agreement of the Common Position we have been awaiting the result of the European Parliament’s Second Reading. The Parliament recently accepted the proposal with one amendment to the main text in Article 31(2) to say:

“Where reference is made to this paragraph, Article 5a of Decision 1999/468/EC, as amended by Decision 2006/512/EC, shall apply, having regard to the provisions of Article 8 thereof”.

The effect of this amendment is to allow the European Parliament to scrutinise any amendments to the standard forms annexed to the Regulation. The Council is likely to agree this amendment next month and it is hoped the Regulation will be adopted during the Finnish Presidency.

13 November 2006

Letter from the Chairman to Rt Hon Baroness Ashton of Upholland

Thank you for your letter of 13 November which was considered by Sub-Committee E at its meeting on 29 November. We are grateful for your keeping the Committee informed of developments. We note in particular that the European Parliament has proposed an amendment which would enable it to scrutinise amendments to the standard forms annexed to the Regulation. We welcome this amendment and are pleased to see that the Council is likely to accept it.

30 November 2006

EUROPEAN REGULATORY AGENCIES (7032/05)

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

Thank you for your letter of 25 July 2006 which was considered by Sub-Committee E at its meeting on 11 October. We note that there has been no progress on the Commission’s proposal since last year and are grateful for your assurance that you will keep the Committee informed of any future developments.

We also note that the Government are currently considering the vire issues underlying the proposal to create European Regulatory Agencies and you draw attention to work being undertaken following the recent ruling of the European Court in Case C-217/04. We look forward to receiving a detailed Note from the Government in the near future. This is an issue which the Committee may wish to discuss at the meeting on 1 November.

The Committee decided to retain the proposal under scrutiny.

12 October 2006

EUROPEAN SMALL CLAIMS PROCEDURE (10160/06)

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

Thank you for your letter of 30 August 2006 which was considered by Sub-Committee E at its meeting on 18 October. We are grateful for the explanations given and for the text dated 24 July.

The Presidency Conclusions record that, at its meeting on 5–6 October, the Council reached a “general agreement” on the text of the Regulation. Somewhat surprisingly the fact that the ESCP was on the agenda was not mentioned in your letter of 5 October dealing with the informal JHA on 21–22 September and the Council on 5–6 October. The Committee would be grateful for an explanation of this omission and of the special reasons for overriding scrutiny in this case.

The proposal is retained under scrutiny.

19 October 2006

Letter from Rt Hon Baroness Ashton of Upholland to the Chairman

You wrote to me on 19 October on the subject of the European Small Claims Procedure. As you know, at the Justice and Home Affairs Council on 5–6 October the Council reached a general agreement on the text of the whole of the instrument. The European Parliament has yet to deliver its opinion on first reading.

This is a key stage in the development of negotiations. Unfortunately, the timing of this during Parliamentary recess did not allow me to approach the Committee in order to seek scrutiny clearance on the Government’s negotiating stance going into the JHA meeting. However, I understand that my officials were in contact with the Clerk to your Committee before the Council. Following these discussions, I had intended to write to you in advance of the Council to explain the position. Indeed, a letter had been drafted but due to what I am told was a clerical error it was not in fact sent. I am sorry for this oversight.

The formal agreement in the Council took place without discussion. I took the view that, notwithstanding that Parliamentary scrutiny had not been completed, it would not be in the United Kingdom’s interests either to abstain or withhold support for the agreement at this stage for a variety of reasons. It is a proposal which the UK has championed and to which we have secured significant improvements in the course of negotiations. I am also keen that the measure should progress quickly during the Finnish Presidency because of the helpful level of priority that you have given to it, and because we are obliged to take positions which the Presidency will consider less helpful on other proposals on the current JHA agenda.

In my letter of 30 August I informed you that at the Council Working Group meeting in September, the UK would be putting forward proposals on revised forms and guidance notes that are annexed to the Regulation.

Our revised forms and guidance was welcomed by a number of Member States who all acknowledged that the format, layout and text were user friendly. During negotiations our overall aims were achieved, as the Presidency conceded the need for improvement. The redrafted forms have simplified guidance notes placed at the appropriate points and there are more clear signposts with the forms to aid litigants complete and understand the various sections. The language has been simplified and abbreviations have been removed. Unfortunately, our attempt to include any reference to ADR was not supported by the majority of Member States. I am enclosing a copy of the revised text.

The matter will now be taken forward by the European Parliament -Committee on Legal Affairs (JURI). Various amendments have been proposed. I will write to you again when we have the European Parliament’s opinion.

The Government, remains of the view that the ESCP is a welcome proposal, which has the potential to deliver real benefits to the citizens in Britain and more widely throughout Europe.

20 October 2006

Letter from the Chairman to Rt Hon Baroness Ashton of Upholland

Thank you for your letter of 20 October which was considered by Sub-Committee E at its meeting on 1 November. We are grateful for your explanation as to why the Committee was not informed in advance of the Council of the Government’s intention to, and reasons for, overriding parliamentary scrutiny.

We note that the next significant step will be the delivery of the Opinion of the European Parliament. We look forward to receiving a copy of the Opinion, together with a further Explanatory Memorandum, in due course.

The Committee decided to retain the proposal under scrutiny.

2 November 2006

Letter from the Chairman to Rt Hon Baroness Ashton of Upholland

Thank you for furnishing for scrutiny the proposed Common Approach with the European Parliament. This has been considered by Sub-Committee E which has agreed to clear the proposal from scrutiny.

As you will be aware the final product of the negotiations does not accord with a number of the key recommendations made by the Committee in its 2005 Report, European Small Claims Procedure, including the very important issue of liability for costs. Nevertheless the Committee hopes that the Regulation will produce a workable procedure which will bring benefits both to consumers and commerce across the Union.

We know that the Government, and you in particular, have placed great emphasis on providing a procedure which will be speedy and take advantage of modern technology. We also note the attention which you have given to the design and content of the forms used by the parties and the Court. Parts may still appear daunting to some, for example sections 4 and 5 dealing with jurisdiction and the cross-border nature of the case. We trust that the commitment which you have personally given to the Regulation will continue throughout its implementation and that the Government will provide the necessary resources to give effect to the obligation accepted under Article 8(a) (assistance to the parties).

19 December 2006

FIGHTING SPAM, SPYWARE AND MALICIOUS SOFTWARE (15379/06)

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

This Communication was considered by Sub-Committee E at its meeting of 24 January 2007.

As you know, the Lords’ Science & Technology Committee is currently undertaking an inquiry into personal internet security and will be considering the issue of spam, spyware and malicious software in that context. Accordingly, we have decided to clear the Communication from scrutiny.

25 January 2007

FUNDAMENTAL RIGHTS AGENCY (10774/05)

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

Thank you for your letter of 8 September 2006 which has been made available to Sub-Committee E. I should be grateful if you would keep the Committee informed of developments.

12 October 2006

Letter from the Chairman to Rt Hon Baroness Ashton of Upholland

Sub-Committee E examined the proposal at its meeting on 22 November 2006.

We are pleased to see that a number of the Committee’s recommendations contained in its Report Human Rights Protection in Europe: the Fundamental Rights Agency, 29th Report of Session 2005–06, HL Paper 155 are reflected in the current position of the draft proposal. Your Explanatory Memorandum explains that revised Article 4(2) allows a limited legislative scrutiny role for the Agency, which is something which we would particularly welcome. However, it is by no means obvious from that Article that legislative scrutiny is what is being envisaged here. This could be made clearer in the text.

The area of the proposal which we find most disappointing relates to the independence of the Agency and its management structure. As we made clear in our Report, there is a danger that the combination of the one-Member State-one-seat management board and the significant role of the Council in determining the Agency’s work programme will lead to excessive interference in and constraints on the Agency’s work. We are pleased to learn from Meg Munn MP that the Government are considering agreeing to a smaller management board for the European Institute of Gender Equality.

We note that this draft still includes the Decision empowering the Agency to act in Third Pillar matters and we express once again our strong support for the inclusion of this remit. As Recital 8 seeks to preclude the Agency from having a role outside the scope of application of Community law, some revisions will clearly have to be made to the proposal if a Third Pillar remit is agreed.

We have decided to clear the document from scrutiny.

23 November 2006

FUNDAMENTAL RIGHTS AND CITIZENSHIP PROGRAMME (10755/06, 13104/06)

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

I wrote to you on 8 September 2006 to provide an update on the latest developments on the proposal establishing a Fundamental Rights Agency (FRA) and the separate proposal establishing a Fundamental Rights and Citizenship Programme (FRCP) for the period 2007–13.

Further to your request of 12 October 2006, I am now writing to inform you of the progress made in the FRA and FRCP proposals. The FRA proposal was discussed at the Justice and Home Affairs (JHA) Council on 6 October 2006 but no political agreement was reached. The discussions on this proposal still focus on the Agency’s geographical scope, the references to the Charter and on the possible extension of the Agency’s activities to the third pillar (police and judicial co-operation in criminal matters). The references to the Charter remain the main point of discussion in the FRCP proposal. I therefore envisage that the texts of both proposals will be subject to further amendments before final agreement is reached in the Council.

The Government has submitted, on 25 October 2006, a Supplementary Explanatory Memorandum on the latest Presidency draft of the FRA proposal (Council Document 10755/06) and an Explanatory Memorandum on the latest (at the time of the request) Presidency draft of the FRCP proposal (Council Document 13104/06). I believe both Presidency texts have also been deposited.

I expect the Presidency to submit both the FRA proposal and the FRCP proposal to the Justice and Home Affairs Council of 4–5 December 2006 (possibly even the COREPER meeting of 22 November 2006) for political agreement. As I had already anticipated in my letter of 8 September 2006, the Government will find itself in the position of having to override the scrutiny process either at the COREPER meeting of 22 November 2006 or at the JHA Council of 4–5 December 2006 in order to reach political agreement on a final text of both the FRA and the FRCP proposals.

I would like to stress again, as I did in my previous letter, that I am fully aware of the importance of Parliamentary scrutiny of European legislation and that I have considered very carefully the implications of the decision to override scrutiny but, due to the timescale set by the Finnish Presidency, I really do not see any feasible alternative to this decision.

I will keep you informed on the progress of both proposals.

6 November 2006

Letter from the Chairman to Rt Hon Baroness Ashton of Upholland

Thank you for your Explanatory Memorandum and letter of 6 November 2006 which were considered by Subcommittee E at its meeting of 29 November 2006.

We are grateful for the information you provide on the progress of negotiations and the likelihood of scrutiny being overridden and look forward to hearing from you following the JHA Council of 4–5 December.

As you know, we examined a revised draft of this proposal under document number 10774/05 at our meeting of 22 November and decided to clear the document from scrutiny. We have also decided to clear document 10755/06 from scrutiny.

30 November 2006

11 Refer to 10774/05 Fundamental Rights Agency.
Letter from Rt Hon Baroness Ashton of Upholland to the Chairman

Thank you for your letter of 30 November 2006 in which you inform me that your Committee has cleared the proposal establishing a Fundamental Rights Agency (FRA). I am writing to update you on the progress of this proposal and the parallel, but separate, proposal establishing a Fundamental Rights and Citizenship Programme (FRCP) for the period 2007–13.

I am pleased to report that the Justice and Home Affairs Council of 4–5 December 2006 reached political agreement on the Council Regulation establishing the FRA. After over a year of intense and complex negotiations, the Government has achieved all its goals with particular regard to the references to the Charter of Fundamental Rights (the Charter) in the body of the Regulation originally proposed by the Commission and the proposed Decision empowering the Agency with a third pillar remit. All references to the Charter have now been moved to the Recitals and are accompanied by a reference to the official explanations and the legal status of the Charter. The proposed Decision on the Agency’s third pillar remit will not be adopted and the issue of the Agency’s third pillar remit will be reviewed by 31 December 2009. In the meantime, European Union Institutions will be able to seek the advice of the Agency on third pillar matters but only on a voluntary basis and only within the framework of the legislative process. Member States may also decide to seek the advice of the Agency in third pillar areas but only in respect of their own implementation of third pillar measures. I am aware of the Committee’s views with regard to the Agency’s third pillar remit which, I believe, remained an area of genuine disagreement between the Government and the Committee.

I am also pleased to report that the COREPER of 7 December 2006 reached agreement on the text of the FRCP. The Government has achieved its goal with regard to the three references to the Charter in the body of the Decision. All these references have now been deleted while the remaining reference to the Charter in the Recitals is accompanied by a reference to the official explanations and the legal status of the Charter.

I expect that the Regulation on the FRA and the Decision on the FRCP will be formally adopted at a Council in January 2007. The Commission will also implement the transitional arrangements in order to establish the FRA from the existing European Monitoring Centre on Racism and Xenophobia.

18 December 2006

Letter from the Chairman to Rt Hon Baroness Ashton of Upholland

Thank you for your letter of 18 December 2006 which was considered by Sub-Committee E at its meeting of 17 January 2007.

We are grateful for your update of proceedings at the December JHA Council as regards the Fundamental Rights Agency. The failure of the Council to agree the Decision which would extend the Agency’s remit to Third Pillar matters is disappointing. We are, however, pleased to see that some Third Pillar remit, albeit very limited, has been preserved and that a provision for review of the issue of the Agency’s Third Pillar remit has been included in the final draft.

Has the Regulation been adopted on the basis of Article 308 TEC? If so, do you consider that this permits the inclusion in the Regulation of provisions granting the Agency a limited Third Pillar remit? We have not had sight of the final agreed text and would be grateful if you could forward a copy to us.

18 January 2007

HUMAN RIGHTS PROOFING EU LEGISLATION

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

Thank you for your letter of 26 March 200612 which was considered by the Select Committee at its meeting on 24 April. As you say there has been a long delay in this matter but we are pleased to see that this has given you the opportunity to discuss with your colleagues how best to respond to the Committee’s concerns. We have a common interest in ensuring that EU legislation is compatible with human rights; it is one element of ensuring better regulation.

We are most pleased to see that the Government have revised their position and will, in future, provide an analysis (not just a statement) of compliance with fundamental rights (as described by Article 6(2) of the TEU) in explanatory memoranda of EU legislative proposals submitted to Parliament for scrutiny. We would be most pleased if your officials, together with those of the Cabinet Office, would proceed, in conjunction with the Clerks, to finalise the arrangement for putting this into practice in the near future.

We fully appreciate that providing a fundamental rights analysis could, in some cases, delay the submission of explanatory memoranda. Our initial reaction is to prefer the submission of explanatory memoranda within the 10 day deadline with the analysis to follow—we would not wish to delay consideration of the merits and other aspects of proposals pending completion of the fundamental rights analysis.

Finally, may I record the Committee’s gratitude for the work you and your officials have put in to this matter. Let us now see how it works in practice. I hope you would agree that it would be helpful to review the procedure in the light of one or two years’ experience.

25 April 2007

ILLICIT TRAFFICKING ON THE HIGH SEAS (5382/02, 5563/02)

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

Thank you for your letter of 24 July 2006 which was considered by Sub-Committee E at its meeting of 11 October 2006.

In light of the prolonged inactivity on this matter, we have decided to clear the document from scrutiny at this time. We would, of course, expect a fresh EM to be submitted to this House should work on the proposal be revived.

12 October 2006

INDEX OF THIRD COUNTRY NATIONALS CONVICTED IN THE EUROPEAN UNION (11453/06)

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

This proposal was considered by Sub-Committee E at its meeting of 25 October 2006.

We are in favour of the creation of an Index of third-country nationals convicted of criminal offences in the EU. In our view, this is essential in order to fill the gap left by the proposed Framework Decision on the organisation and content of the exchange of criminal record information between Member States.

We note that the Government are awaiting the information from the completed questionnaire issued to Member States before committing to a view of how the index should work. We agree that a cautious approach is required, particularly where, as in the present case, there are serious concerns regarding the reliability of data and use of biometric data is being discussed. We consider that it is of the utmost importance to ensure that the data contained in the proposed Index is up-to-date and permits accurate identification of convicted individuals.

Given the potential difficulties of identification, there may be a case for the inclusion of biometric data in the Index. We would expect this to be used merely to confirm an individual’s identity and would have to be persuaded, with the support of hard evidence, of the need for a biometrics search facility. In any case, use of biometrics will require robust data protection provisions and we trust that the Government will push for the inclusion of such provisions in any future Commission proposal and during negotiations on this instrument.

We would be grateful to hear your views on the form the future Index should take once you have received the further information sought by the Commission. What scope do you expect there will be to influence the shape of any future Commission proposal at that stage?

We have decided to hold the working paper under scrutiny.

26 October 2006

Letter from Joan Ryan MP to the Chairman

Thank you for your letter of 26 October with the comments of Sub-committee E on the above Working Document.

I am pleased to note that the Committee is in favour of the creation of such an index.

I note your comments relating to the reliability of data and the need for that to be as up to date as possible. I also note the need for robust data protection provisions to be included and confirm that the Government will push for such measures during negotiations.

Once the Commission have released the information they previously sought, it is the intention of the Commission to conduct further debate on the results and options for an index. I would expect the UK Government to be able to present its position at those negotiations. However, I believe that it would be sensible to see the outcome of the information sought by the Commission before the UK’s position is determined. At present there is no set date for the Commission to release their findings.

7 December 2006

Letter from the Chairman to Joan Ryan MP

This proposal was considered by Sub-Committee E at its meeting of 10 January 2007.

We welcome your assurances that the Government will push for robust data protection measures to be included in any future proposal.

We note that you are awaiting the results of the Commission questionnaire before adopting a position on the Index. We would be grateful if you would provide us with a copy of the Commission’s findings as soon as they are available and look forward to hearing your views on the proposed Index in due course.

In the meantime, the working paper is retained under scrutiny.

11 January 2007

Letter from Joan Ryan MP to the Chairman

Thank you for your letter of 11 January 2007 with the comments of Sub-Committee E on the above Working Document. I am sorry for the delay in replying.

I advised you previously that no date had been set for the Commission to release its findings from questionnaires submitted by Member States. This letter is by way of an update.

The Commission is still receiving questionnaires from Member States, and the United Kingdom submitted its response in September 2006.

The first priority in the Council is the Framework Decision on the exchange of criminal records, and it is unlikely that there will be further developments with regard to the index of third country nationals until negotiations on the Framework Decision have moved on significantly.

16 April 2007

INFORMATION EXTRACTED FROM CRIMINAL RECORDS (5463/06, 7594/07)

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

Thank you for your letter of 25 July 2006 which was considered by Sub-Committee E at its meeting of 25 October 2006.

Data Protection

Although we agree that the particular use provisions serve to ensure to a limited degree that the information received is up to date, we do not consider that they are sufficiently robust to guarantee the accuracy of information. Information passed to an Italian authority for sentencing purposes, for example, may be provided some time before the sentencing hearing. If, between the date that the information is sent to Italy and the date that the hearing is held that information is amended, the Italian authority should be made aware of this. The proposal as currently drafted does not require such notification.

If you agree in principle that there should be notification in these circumstances, it would appear relatively straightforward to make the necessary drafting change to the proposal. If you do not agree, we would be interested to hear the reasons behind your position.

**CONTENT OF INFORMATION TRANSFERRED**

Thank you for providing a copy of the draft Manual of Procedure. It has helped our understanding of how the system might work.

**DUAL NATIONALITY**

You say that if the system works correctly, there will be no need to take extra precautions to ensure that individuals with dual nationality do not abuse the system. We do not understand there to be any safeguards in the current proposal to prevent abuse of the system by dual nationals. We would be grateful if you would point out the provisions you consider to be relevant here.

**DATA CONTROLLER**

Thank you for clarifying that the convicting State is the data controller for the purposes of this Framework Decision. We have not seen the current draft of the proposal to which you refer, and it would be helpful if you would provide a copy.

**RECORDING OFFENCES**

We remain concerned about how convictions for acts which are not considered to be offences by the State of nationality will be dealt with. Your explanation that the matter would be covered "by adherence to the principles of Data Protection" and your comments regarding scope of application did not bring much clarification. What are the principles of data protection to which you refer and where can they be found?

Your position seems to be that the Framework Decision will oblige States to transfer the information; it will be up to the receiving State to decide what to do with information received. Accordingly, where the receiving State is the State of nationality, it may choose not to include in the criminal record of the individual concerned the information transmitted. Does this accurately reflect the Government’s position (and the position under the current draft of the proposed Framework Decision)?

If this is the case, it would mean, for example, that the UK would be entitled to refuse to include a conviction for Holocaust denial imposed by a German court in a British national’s criminal record information. In a subsequent case in Austria, the Austrian authorities would have to be aware that they may need to make a direct request for information from other Member States to find out if the individual has any relevant previous convictions. As the system envisaged by the proposed Framework Decision proceeds on the assumption that complete criminal record information is held by the State of nationality, a loophole like this could undermine the certainty of the system. Your comments on this would be most welcome.

We have decided to retain the proposal under scrutiny.

26 October 2006

**Letter from Joan Ryan MP to the Chairman**

Thank you for your letter of 26 October with the comments of Sub-Committee E on the above proposed Framework Decision (FD). I give responses below to the specific issues raised by the Sub-Committee.

**DATA PROTECTION**

With respect to the example you give, this appears to relate to a requesting Member State’s use of data that has changed subsequent to a response being made to their request.

The FD requires Member States to provide a full criminal records history as available when the request is made. Where there is a delay in proceedings within the requesting state it is possible that the original record might be updated without the requesting state’s knowledge. In the event of a delay in the requesting state’s proceedings, the Central Authority of the requesting state can repeat its request to ensure that its judiciary are given the most recent facts.
Requesting Member States will not be under an obligation to store the details of convictions provided to them in response, as the records would not relate to one of their nationals. Therefore the provisions of articles 4 and 5 would not apply.

Dual Nationality

Article 4 (2) imposes a duty on the convicting Member State to consider the issue of dual nationality. It states that:

“If it is known that the convicted person is a national of several Member States, the relevant information shall be transmitted to each of these Member States”.

If the Committee are concerned that persons may deliberately conceal dual nationality at the time of arrest or conviction, then it is correct that this FD does not cover that eventuality, as you will see that the article states “if it is known”. Member States will need to consider their own national legislation and procedures to address this point. Since the Committee has helpfully brought this to my attention, I will ensure that the Overseas Crimes Task Force—recently established within the Home Office to consider the range and quality of overseas criminal information—is made aware.

Recording Offences

There does remain the possibility of offences advised to the UK made against UK nationals not being offences within the UK. The most practical solution is to ensure that a “full UK master record” is held (i.e. these offences are recorded on PNC) and transmitted when another Member State makes a request. However, before committing on this point my officials will seek legal and technical advice on the issue.

7 February 2007

Letter from the Chairman to Joan Ryan MP

Thank you for your letter of 7 February 2007 which was considered by Sub-Committee E at its meeting of 7 March 2007.

Data Protection

We note what you say as regards updating criminal record information. We remain of the view, however, that any changes to a criminal record within a period of, for example, 14 days after a reply has been sent to a request for criminal record information might usefully be notified to the requesting State.

Dual Nationality

You say that Member States will need to consider their own national legislation and procedures to address the potential abuse of this system by dual nationals. We welcome your undertaking to raise this matter with the Overseas Crimes Task Force and would be interested to hear in due course what measures they propose to minimise abuse.

Recording Offences

We are pleased to see that you agree in principle that a full UK master record ought to be held, which would include convictions for offences overseas which are not offences under UK law. We note that your officials will seek legal and technical advice on this issue and look forward to hearing from you on this point.

Given that this issue is not restricted to the UK, have the Government sought the views of other Member States? What is their position?

General Obligation to Consult

In the context of our correspondence with you on the related proposal for a Framework Decision on sex offences against children (Documents 11434/06 and 13524/06) we raised the possibility of including in the present Framework Decision a general obligation to consult the criminal records of the Member State of
nationality each time the national criminal records of a non-national are consulted. Your view was that the inclusion of such a provision might lead to a delay in agreeing this Framework Decision as you suggest that negotiations would effectively have to be restarted. Have you sought the views of other Member States on this matter? The possibility of agreeing a general obligation was raised by the Finnish Presidency on the sex offences matter and we would be interested to know the reactions of other Member States to that suggestion. In our previous letter, we asked to see a copy of the most recent version of the Framework Decision. We would be grateful if you could provide us with a copy as soon as possible.

We have decided to retain the proposal under scrutiny. We understand that the Government strongly supports the adoption of this proposal as soon as possible and would be grateful if you would keep us up to date with any developments.

8 March 2007

Letter from Joan Ryan MP to the Chairman

Thank you for your letter of 8 March. I am writing to provide you with further information on the specific issues highlighted by the Committee.

Updating Criminal Record Information

The first point you raise concerns updating criminal record information exchanged under the Council Decision. The Government agrees that it is vital that the information on previous convictions that is relied upon in the course of new criminal proceedings is accurate. The best way to achieve this is by ensuring the completeness of the criminal record as held by the State(s) of nationality. The Government is satisfied that the obligation on Member States established under Article 4(4) to inform the State of nationality of any alteration or deletion of information contained in criminal records and the obligation on the State of nationality established by Article 5(2) to use such information to update the criminal record will achieve this.

The Framework Decision rightly places the onus on the requesting state to verify that the information it is using is up to date. The requesting state will always have the option of making a new request if there has been a significant delay in using the data.

The Committee suggests that changes to the criminal record within a certain period of a response to a request for criminal record information might usefully be notified to the requesting state. However, this would have significant resource implications since it would entail each state keeping a live-register of requests even after they had been fulfilled. Furthermore, the State of nationality will not be in a position to ascertain whether the information supplied in response to a request had already been used. Such an amendment could lead to States of conviction updating requesting States where the latter had already used the information supplied and which was correct at the time it was used.

Dual Nationality

On dual nationality, the Framework Decision establishes an obligation on Member States to take the necessary measures to ensure that information on the nationality or nationalities of the convicted person are recorded in the criminal record. We will have to consider when implementing this Framework Decision whether there are any amendments to legislation or to practice that we will need to take in order to comply fully with this obligation. The Framework Decision further obliges Member States to transmit information of a conviction against an individual to all Member States of which that individual is a national. Where the individual is a national of the Member State of conviction, but holds nationality of another Member State, the State of conviction is obliged to inform the other State or States of nationality. This goes further than the obligation established under Article 22 of the Council of Europe Mutual Legal Assistance Convention of 1959 which only obliges the State of conviction to transmit information on a conviction against an individual with dual nationality to the States of nationality when that individual is not a national of the State of conviction.

Recording Offences

Regarding the transmission of information on convictions imposed against UK nationals for offences in other Member States which are not offences under UK law; I can confirm that we can record such information on the PNC. As stated above, the Government agrees with the Committee that a central premise of the Framework Decision is to guarantee the completeness of the information held by the State of nationality.
GENERAL OBLIGATION TO CONSULT

Since my letter of 26 February, this issue has moved on. At the Working Group meeting held also on 26 February, it was agreed that the best way to achieve the goal of the original “Belgian Initiative” (i.e. to recognise prohibitions imposed by other Member States) was to focus on the mechanisms for exchanging information since neither mutual recognition nor assimilation appeared to provide effective solutions. The Presidency has now put together a paper to be considered by the Article 36 Committee (at their next meeting on 22–23 March) on a way forward. The proposal relates to amending the Framework Decision on criminal records to impose obligations on the central authorities of Member States to always consult with the Member State of nationality where a request for a criminal record extract is made, and for the central authority of that State to respond. The UK will broadly support this proposal subject to seeing the draft text. At this stage, it is not clear what the direction of this work will take but I will keep you updated.

In response to the Committee’s request, I enclose a copy of the most recent version of the Framework Decision 7594/07 COPEN 38.

26 March 2007

Letter from the Chairman to Joan Ryan MP

Thank you for your letter of 26 March 2007 which was considered by Sub-Committee E at its meeting of 25 April 2007.

DATA PROTECTION

We accept that an obligation on the Member State of nationality to update Member States which have previously requested information is likely to have resource implications. In the circumstances your assurance that every effort will be made to ensure information is accurate and up-to-date is most welcome. In this context we note that the Data Protection Framework Decision has not yet been agreed and hope the Government will urge Member States to conclude an effective and comprehensive instrument as soon as possible to ensure that the necessary data protection safeguards are in place.

DUAL NATIONALITY

We note what you say regarding dual nationals. However, in our view the key words are contained in Article 4(2): “If it is known that the convicted person is a national of several Member States”. Knowledge of nationality appears to us to be in the possession of the convicted person who may not have an interest in disclosing all nationalities in all cases. Is this something which you have asked the Overseas Crime Task Force to consider? If not, what action do you propose to avoid this potential problem?

RECORDING OFFENCES

We are pleased that convictions for overseas offences that are not offences in the UK can and will be recorded on the PNC. Will other Member States take a similar approach?

GENERAL OBLIGATION TO CONSULT

The developments regarding a general obligation to consult are interesting. We look forward to hearing more from you on this matter shortly in light of the March (and any subsequent) meeting. As you know, we have previously suggested the inclusion of such an obligation and consider that this would be a positive addition to the Framework Decision.

The proposal is retained under scrutiny.

26 April 2007
INTELLECTUAL PROPERTY RIGHTS (8866/06)

Letter from the Chairman to Gerry Sutcliffe MP, Parliamentary Under Secretary of State, Home Office

Thank you for your letter of 22 August 2006, which was considered by Sub-Committee E at its meeting of 18 October 2006.

We understand that the JHA Council of 5–6 October agreed that discussions on the substantive provisions should continue, notwithstanding the Court’s pending judgment. How, and on what assumptions, are discussions to proceed?

The Council Conclusions also state that “further scrutiny is needed regarding the need for criminal measures” to protect intellectual property rights at EU level. What further scrutiny is envisaged?

We look forward to hearing your more detailed views on the Article 95 legal base in due course.

We have decided to hold the proposal under scrutiny.

19 October 2006

Letter from Gerry Sutcliffe MP to the Chairman

Thank you for your letter of 19 October concerning the proposed Intellectual Property Directive. In your letter you raise three points that are at the heart of the Intellectual Property debate. I will deal with each in turn.

As you say, it was agreed at the JHA Council of 5–6 October that discussion of this instrument would resume. You ask first about how and on what assumptions discussions would proceed. The conclusion was that discussion of both the need and substance would proceed at expert level without prejudice to a final decision on the appropriate legal base. This was in the expectation that a more definitive determination of the competency issue may emerge in the judgment of the European Court of Justice in the maritime pollution case.

As regards the necessity issue, and in response to your question as to what further scrutiny is envisaged, I can only say at this stage that we consider this issue to be of paramount importance and will be raising it as soon as discussions resume. The Government will make it clear that the issue can only be resolved by way of proper systemised evaluation. On the substance, the Presidency concluded that the dossier would be referred for further discussions on the basis of a scope limited to those intellectual property rights in respect of which the Community has established rules and norms.

Our initial discussions with the incoming German Presidency indicate that negotiations on this instrument are likely to resume in March or April next year. They are yet to finalise plans for dealing with the necessity issue and, although the incoming presidency will of course acknowledge the Council mandate on scope, it remains unclear whether discussions will resume on the basis of a new text.

I note your reference to more detail on the Government’s views on the Article 95 legal base. Our initial view that we are yet to be convinced that this dossier is an internal market issue remains and we will continue to advance this view in the renewed discussions. We also note that the proposals remain under scrutiny. I hope this clarifies matters. We will of course keep you informed of any significant developments, including the progress of the arguments on the suitability of the Artlice 95 legal base.

9 November 2006

Letter from the Chairman to Gerry Sutcliffe MP

Thank you for your letter of 9 November 2006, which was considered by Sub-Committee E at its meeting of 29 November 2006.

We are grateful for your clarifications and your undertaking to keep us informed of developments. We look forward to hearing from you as regards the need for the proposed Directive, its scope and its proposed legal base.

We note that there is a possibility of a new text being prepared by the German Presidency and look forward to receiving a copy of any such text in due course. In any case, we would be grateful to hear from you following the next Working Group meeting to discuss this proposal, which we understand is not likely to take place before March 2007.

We have decided to hold the proposal under scrutiny.

30 November 2006

JUDICIAL TRAINING IN THE EU (11243/06)

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

This Communication was considered by Sub-Committee E at its meeting of 11 October 2006.

We welcome initiatives designed to encourage cooperation between judges in different Member States and improve awareness and understanding in the UK of the European context. We do, however, share your concerns that any training programme organised at EU level should meet the needs of the judiciary in all the different jurisdictions of the EU. Differences in how and when judges are recruited in the UK compared to many continental systems should be reflected in any future Commission proposals and we fully support the Government’s aim of ensuring equal access to funding by all Member States.

We are also concerned at the proposal to allow prosecutors to participate in judges’ training. While prosecutors are equated to judges in most civil law systems, in the UK their position is quite different. It is not clear what the Communication means by “subject to full respect for national traditions concerning the separation between prosecutors and judges” (para 33) and careful attention will have to be paid to this matter in any future proposals.

You say that a French initiative to establish the EJTN failed for reasons of “pillar purity”. The EJTN has now been set up outside EU structures. Are there disadvantages in the present arrangement? Would there be any difference (particularly as regards funding) were the body to be established within the EU umbrella? Are the Government concerned that the present arrangement might set an unhelpful precedent?

Finally, we are interested to understand more about how the EJTN currently operates. Have UK judges participated in any exchanges under that programme? Is there much coordination at present as regards training, and in particular awareness of European law? What training is currently available for judges in the UK and does it reflect the priorities listed in paragraph 24 of the Communication?

We have decided to hold the Communication under scrutiny.

12 October 2006

Letter from Rt Hon Baroness Ashton of Upholland to the Chairman

Thank you for your letter of 12 October on the Commission Communication on judicial training in the EU. You asked whether there are disadvantages in the present arrangement, whether there would be any differences (particularly as regards funding) if the present European Judicial Training Network (EJTN) were to be founded under an EU umbrella, and whether the Government is concerned that the present arrangement might set an unhelpful precedent.

The EJTN was established in 2000. It is working towards a framework agreement with the EU for the purposes of clarity and to preserve judicial independence across Europe as far as possible rather than go down the route of establishing an EU instrument. The Government is content to support the EJTN in this regard. The Commission’s proposal supporting the EJTN through the framework funding programme on fundamental rights and justice ought, though the comitology arrangements proposed in that programme, to introduce an appropriate degree of transparency into the arrangements. There is no reason to suppose that the EJTN would gain more funding if it were established on a different basis, nor does the Government have any present concerns about any precedent that might be set.

You asked various questions about the EJTN.

Training for judges in England and Wales is undertaken by the Judicial Studies Board (JSB), an independent judicial body under the Lord Chief Justice’s stewardship. Acting through its Director of Studies (Judge Victor Hall), the JSB is an active member of the European Judicial Training Network (EJTN). As the largest common law country, England and Wales plays a prominent part in the Network. The JSB is a member of the nine country Steering Committee which meets four or five times a year and provides direction. In total, 36 training organisations are either members [28] or observers [8]. We are also a member of one of the three Working
In relation to the point you raise in your letter about prosecutors participating in judicial training, it is not that EJTN allow prosecutors to participate in judges’ training but that most Member States see prosecutors as members of their judiciary; in some cases they are classified as such by state decree or other legislative act.

As regards funding, the EJTN’s expertise in the field has been recognised to the extent that its work has attracted a permanent administrative budget line for the years 2007–13 which will take away the need to bid annually with all the uncertainties this brings. The EJTN’s administrative budget grant is likely to rise to c Euro 1 million by 2013. EJTN members pay subscriptions totalling approximately 170,000 Euros, based pro-rata on gross national product. Hitherto this has been assimilated into both operational and administrative budgets.

This budget underpins a seven-year strategy and concomitant work plan which have been formulated to allow for EU expansion and a consequent increased membership of EJTN. The Strategy provides for EJTN to have an active role in promulgating training methodologies, to provide for judges to participate in each others seminar programmes and to facilitate exchange of judges across Europe.

The EJTN will be (separately) funded by the EU to the tune of c 2 million Euro for 2007 to facilitate the exchange programme. The programme aims to increase judges’ familiarity with the legal and judicial systems of other Member States, one of the three priorities listed in paragraph 24 of the Communication. Judges in England and Wales do not currently take part in the exchange programme (which is in its third year) principally for reasons connected with judicial workload. However, I understand that the judiciary in Scotland have been involved. I should also add that although judges in England and Wales are not participating in this programme, many do accept invitations to visit other states, some to participate in training, and the JSB welcomes judges from Europe and beyond to experience its training and to share their views with participants on courses.

Another of the three priorities listed in the Communication stresses the need for judges to improve their understanding of EU law. The training that the JSB provides includes updates on EU legal instruments, where appropriate. Recent examples include the European Arrest Warrant in criminal law and both Brussels I and II in civil and family law. The EJTN is also concerned in formulating a curriculum in European Law; a pan European website to enable exchange of EU documents.

Further, many of its members are also members of the Lisbon Network of the Council of Europe (including England and Wales) and are working in the HELP programme towards a revised Human Rights training programme. The Lisbon Network comprises the 46 countries across Europe and their training organisations.

The third priority in the Communication suggests that judges should develop language skills and the EJTN now has a programme of linguistic training. England and Wales has not chosen to participate at this time.

Finally it is worth reiterating that in the UK, judicial training is quite specifically under judicial control, not that of the Executive.

30 November 2006
Regarding the framework for the EJTN, we note that the Government has no concerns about any precedent that may be set by the present arrangement. We would be grateful if you would explain what you understand is required or prohibited under the principle of pillar purity, a principle to which the Government did not make reference in the discussion of the proposed remit of the Fundamental Rights Agency.

We have decided to retain the Communication under scrutiny.

11 January 2007

JURISDICTION OF THE COURT OF JUSTICE (11356/06)

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

Thank you for your letter of 15 August 2006 which was considered by Sub-Committee E at its meeting on 11 October. It would seem that the Government are at a quite preliminary stage in their analysis and assessment of the proposal. We look forward to receiving a detailed analysis of the risks and benefits, as promised in your letter. It would be helpful if at that time you could indicate whether the Government support the Commission’s proposal.

You say that the Government could support a measure which would improve the speed of cases referred to the ECJ. As you will be aware, the Court has itself recently produced a Discussion Paper on the treatment of preliminary rulings in the area of freedom, security and justice. This proposes an “emergency preliminary ruling procedure”. The Government’s response to the Discussion Paper would seem to be relevant to their consideration of the Commission’s Communication—the two documents are clearly related. We would be grateful therefore if you would include that response in your reply to this letter.

Finally, we note that the Constitutional Treaty would substantially remove the complexity surrounding the jurisdiction of the ECJ over the area of freedom, security and justice and that the preliminary reference procedure would be available to all courts, the ECJ jurisdiction being limited only in respect of national police operations and national measures concerned with the maintenance of law and order and the safeguarding of internal security. It appears that the Government were, and presumably still are, prepared to accept this position.

The Committee decided to retain the proposal under scrutiny.

12 October 2006

Letter from Joan Ryan MP to the Chairman

Thank you for your letter of 12 October 2006. I apologise for the delay in replying. Since it submitted its initial Explanatory Memorandum on the Commission Communication on 19 July 2006, the Government has had the opportunity to consider the potential implications of the proposal to extend the jurisdiction of the European Court of Justice in Title IV TEC.

The Government was informed that the opt-in deadline under the United Kingdom and Ireland protocol was 19 October 2006. The UK did not notify the Council of a decision to opt in by that date. Ireland did not opt-in either.

However, the Government intends to engage in negotiations on this proposal with a view to opting in at the end if important amendments can be secured. These are to restrict references to the ECJ to the equivalent of our Court of Appeal (the Court of Session in Scotland), while in parallel securing improvements to the working of the ECJ.

We regret the absence of an impact assessment or estimate of the potential impact of the proposal on the time taken by the ECJ to give a preliminary ruling. The Government recognises the difficulties in accurately estimating the potential numbers of cases that could be involved, especially because new Community laws under Title IV will only come into effect over the next year, but will raise the absence of an impact assessment during working group discussions.

The potential benefits of the Commission proposal are that in cases raising genuinely difficult questions of interpretation of EC law, where it is evident that the ECJ will need to give a preliminary ruling, it would remove unnecessary stages of referrals through the domestic court system, increasing access to justice, potentially speeding up decision-making and reducing costs.

However, the Government is concerned that allowing all courts to refer cases for preliminary rulings could have an adverse impact on the speed of decision-making at the ECJ and consequently on the length of time it takes to resolve domestic cases. Implementation of the proposal as it stands could result in significant numbers

of referrals from lower courts. We recognise that even a relatively modest increase in referrals in each Member State could create large backlogs of cases at the ECJ and consequential delays in domestic decision-making, especially if similar domestic cases were stayed pending an ECJ preliminary ruling. Delays would not benefit our citizens or help us meet our domestic priorities. This is why improving the efficiency of the ECJ must accompany any extension of its competence.

The Government recognises that if adopted, the proposal will affect the UK whether we opt in or not, because of the potential increase in workload caused by changes to the rules applicable to other Member States. It considers that there would be merit in seeking to restrict the ability to refer cases to the Court of Appeal and above, avoiding the need for cases raising genuinely difficult questions of EC law to be referred to the House of Lords. It will press this point in negotiations.

The Committee requested a reply to the ECJ discussion paper on the introduction of an emergency procedure for preliminary rulings in the area of freedom, security and justice. The Foreign and Commonwealth Office has provided a separate explanatory memorandum on that document.

The government acknowledges that the Constitutional Treaty would have introduced the same changes to jurisdiction of the Court. The Constitutional Treaty represented a finely balanced package that was a good overall deal for the UK, but proposals to implement individual elements should not be considered as a direct parallel.

12 December 2006

Letter from the Chairman to Joan Ryan MP

Thank you for your letter of 12 December which was considered by Sub-Committee E at its meeting on 10 January. We are most grateful for the information you have provided.

We were interested to learn that the United Kingdom (and also Ireland) has elected not to opt in to the proposal but will nonetheless participate in the negotiations with the objective of restricting any increase in the jurisdiction of the ECJ to references from the Court of Appeal or above. We would be interested to learn whether such a limitation could be easily reproduced in the jurisdictions of other Member States and how likely it is that the Government can get agreement to amendments which would enable the United Kingdom to opt in.

We share the Government’s concern about the absence of an Impact Assessment or an estimate of the potential impact of the proposal on the ECJ. We welcome the steps being taken by the Government. What progress have you made? Is the UK’s position weakened because it has not opted in to the proposal?

We are most interested to see that parallel to restricting references to the ECJ to the Court of Appeal the Government had the objective of “securing improvements to the working of the ECJ”. What proposals are the Government advancing? To what extent can efficiency be achieved within the existing Rules of the Court? Is there a case for the Court having autonomy to determine its own Rules?

Finally, with regard to the Court’s Discussion Paper, we have now received the Explanatory Memorandum from the Foreign Office and have written to the Minister for Europe drawing attention to the relationship between the Commission’s Communication and the Discussion Paper. We would be grateful for your confirmation that your officials will be liaising with Mr Hoon’s in formulating the Government’s position on these two documents.

The Committee decided to retain the Communication under scrutiny.

11 January 2007

Letter from Joan Ryan MP to the Chairman

Thank you for your letter of 11 January 2007.

At the last working group, a number of Member States, including the UK, suggested that this proposal should only be considered after consideration of the Court’s discussion paper on new expedited procedures for preliminary references concerning the area of freedom, security and justice. Working group discussions will proceed on that basis and focus on the Court’s proposals for the immediate future. I will keep you informed of the progress of discussions on the Commission Communication once they resume.

You asked whether the objective of restricting any increase in the ECJ’s jurisdiction to references from the Court of Appeal or above could be reproduced in other Member States and how likely it was that the Government could get agreement to amendments enabling the UK to opt in. The Government recognises that differences between court systems and appeal structures across the European Union mean that it is not simple.
We are exploring the feasibility of our proposal with other Member States and a number have expressed an interest.

The decision on whether or not to opt in will also depend on the outcome of discussions on the related discussion papers from the ECJ. The Department is working closely with the Foreign and Commonwealth Office and I will refer you to the explanatory memoranda deposited by the Minister for Europe for details of the proposals the Government will be advancing in relation to improving the accelerated procedure for cases in the area of freedom, security and justice. In response to your question about whether the Court should have the autonomy to determine its own Rules, the Court is represented at the ECJ working group in the Council and makes proposals and contributes to any discussions on amending the Rules of the court.

30 January 2007

Letter from the Chairman to Joan Ryan MP

Thank you for your letter of 30 January which was considered by Sub-Committee E at its meeting on 21 February. We were most interested to learn that the Working Group will focus its attention on the Court’s Discussion Paper and accordingly that discussions on the Commission Communication have been deferred. We agree with the Government that this is the better way to proceed. We are also pleased to learn that your officials are working in close cooperation with FCO officials in these related matters.

Thank you for your undertaking to keep us informed of the progress of discussions on the Commission Communication when they resume. We would be grateful if on that occasion you would take the opportunity to respond to the Committee’s request for clarification of what progress is being made as regards the preparation of an Impact Assessment or some other estimate of the potential impact of the Commission’s proposal. We would also expect to learn in more detail how the Government, in addition to restricting references to the ECJ to the Court of Appeal, intend to secure the objective of “securing improvements to the working of the ECJ”.

The Committee decided to retain the Communication under scrutiny.

22 February 2007

MAINTENANCE OBLIGATIONS (5198/06, 5199/06)

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

I am writing to update the Committee on developments in the negotiation of the proposed EU Regulation on maintenance.

Since I last wrote to you the UK has submitted written comments to the Council. I attach a copy of my official’s letter to the Council Secretariat for your information (not printed). Since these comments were submitted, the Presidency has come forward with a new text and Second Reading has begun on the basis of the new draft, a copy of which is also enclosed (not printed).

Noteworthy within the new Presidency text is the suggestion that the applicable law chapter in the draft EU proposal should be set aside and this aspect instead considered in the context of negotiations on the same topic due to take place in the forthcoming Hague Conference. The EU Working Group has agreed to this proposal. This is potentially a positive step since the inclusion of the rules in the EU proposal was a source of many of our most significant issues. We remain engaged in the negotiations of this proposal and I will write to you again when there are further developments to report.

Undated, February 2007

Letter from the Chairman to Rt Hon Baroness Ashton of Upholland

Thank you for your letter of February which was considered by Sub-Committee E at its meeting on 7 March. We are grateful for your providing a copy of the latest text of the proposal and for setting out the latest position in, and expected progress of, the negotiations.

We were particularly interested to learn that there seems to be some support for removing the provisions relating to applicable law and leaving them to be discussed in the context of the forthcoming discussions in the Hague Conference. This, we agree, would be a welcome step.

We were also interested to see the letter written by your official to the Council Secretariat. We are most pleased to see that the UK has taken a firm line on the issue of Treaty base, an issue which we raised when we first looked at this proposal early last year.
Finally, as I mentioned in my letter of 8 June 2006,\textsuperscript{17} we would be grateful if you could let us know what is the position regarding the Commission’s Communication of 15 December 2005 (Doc 5198/06). You will recall that we asked whether they had been any discussion of the Communication in the Council and if so what conclusions have been reached.

The Committee decided to retain the proposal under scrutiny.

8 March 2007

\textbf{Letter from Rt Hon Baroness Ashton of Upholland to the Chairman}

Thank you for your letter of 8 March. I am pleased that you agree with the line the UK is taking on this issue.

You ask, again, about the position regarding the Commission’s Communication of 15 December 2005, a question first raised in your letter of 8 June 2006.

The Communication suggested that the proposed measure concerning maintenance was best considered as the collection of a civil debt and should be viewed as a financial matter. Therefore, they invited the Council to use the \textit{passerelle} in Article 67(2) to allow matters concerning family maintenance to be taken forward under qualified majority voting in the Council and co-decision with the European Parliament. Such a decision would require unanimity in the Council.

The Communication was debated in the Civil Law Committee under the Austrian Presidency where it did not achieve sufficient support.

The matter has not been pursued further.

My letter to you of 26 June 2006 sent under reference: doc. 5198/06 explains the situation more fully and I confirm that the position remains the same. On the basis of that letter, your Committee cleared doc. 5198/06 from scrutiny on 6 July 2006.

20 March 2007

\textbf{Letter from the Chairman to Rt Hon Baroness Ashton of Upholland}

Thank you for your letter of 20 March which has been considered by Sub-Committee E. We are grateful for your confirmation that there have been no further developments relating to the Commission Communication relating to the use of the \textit{passerelle} in Article 67(2) TEC.

As regards the proposed Regulation relating to maintenance obligations, we would be grateful if you would keep us informed of developments.

The Committee decided to retain the proposal under scrutiny.

29 March 2007

\section*{MEDIATION IN CIVIL AND COMMERCIAL MATTERS (13852/04)}

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

I am writing to inform your Committee about recent developments in negotiations on this proposed Directive and to share with you our thoughts on how best to restrict the scope to cross-border disputes.

There has been no consideration of this proposal in the Council since the UK Presidency while we have been awaiting the opinion of the European Parliament. We are expecting that opinion within the next few weeks.

It looks likely that the Parliament will call for a restriction to cross-border disputes. With a large majority in the Council also demanding such a restriction we are hopeful that the scope of the instrument will apply only to cross-border disputes.

Once the principle has been agreed we will need to decide how best to define the restriction. This is more difficult for mediations than it is for court based procedures because of the flexible nature of mediation. For example a definition based on the place of the mediation would be problematic because there are no rules to determine where that should be. Parties can choose to mediate anywhere without any jurisdictional constraints and could choose to mediate in a particular country to ensure either that the Directive did or did not apply.

An added complication is that if the mediation is by telephone or video conference the parties and mediator could all be in different Member States.

\textsuperscript{17} Correspondence with Ministers, 40th Report of Session 2006–07, HL Paper 187, pp 379–380.
While it might be argued that as mediation is a consensual process the parties should be able to decide whether or not the Directive will apply we believe that this will lead to legal uncertainty and a lack of consistency in the way cross-border disputes are settled by mediation within the internal market.

We want to avoid situations where a party could inadvertently consent to mediate in a place which would lead to the disapplication of the Directive. This might happen because the parties were unaware of the consequences of the choice of the place of mediation or because one party who is aware of those consequences takes advantage of one who is not. As neither the parties to the mediation nor the mediator may be lawyers, it is in the interest of everyone for the restriction to be simple and to provide legal certainty.

The European Parliament is currently considering the following definition:

1. The provisions of the Directive shall apply in cases having cross-border implications; in particular:
   a. Article 5 shall apply where an agreement resulting from mediation, to which this directive applies, must be enforced in a Member State other than that in which the agreement in question was rendered enforceable;
   b. Article 6 shall apply where the competence of the court seised of a claim arising from a dispute which the parties have tried to resolve by mediation results from the application of Community instruments on judicial competence, such as Regulation 44/2001 or Regulation 2201/2003;
   c. Article 7 shall apply where a claim arising from a dispute which the parties have tried to resolve by mediation must be brought, in the course of civil or commercial proceedings, before a court which is competent as a result of the application of Community instruments on judicial competence, such as Regulation 44/2001 or Regulation 2201/2003.

2. This Article shall be without prejudice to rules of national law that provide for the enforceability of settlement agreements, the confidentiality of mediation or the effect of mediation on limitation and prescription periods in cases other than those having cross-border implications within the meaning of this Article.

In our view this does not provide the necessary certainty or transparency. For paragraph (a) not only are there no rules about where the mediation should take place, there are no rules in the proposal which stipulate the Member State in which a court/authority should declare an agreement enforceable. As it can be done anywhere there is a danger that parties will not know whether or not the Directive will apply. Again they could choose to hold the mediation in one place or have it declared enforceable somewhere just to influence the application of the Directive. We believe that is undesirable for the reasons given above.

We agree that the provisions of Article 6 (ensuring that mediators cannot be compelled to give evidence in any subsequent court proceedings) and Article 7 (ensuring that parties will not lose their chance to go to court because of the expiration of limitation periods) are important safeguards and are factors that help to promote the use of mediation. Therefore we see merit in making special provision for them in a cross-border restriction. However rather than just referring to the jurisdiction of the courts being determined by the application of Regulations 44/2001 and 2201/2003, as in paragraphs (b) and (c), we believe it would be preferable to have another cross-border connecting factor—for example, following the model of the European Order for Payment.

It seems to us that for mediations legal certainty and transparency will best be achieved by attaching the cross-border element to the domicile or habitual residence of the parties. However there might be occasions when even though the Directive will not apply to the mediation, if the mediation fails and the dispute goes to court there may be a cross-border connecting factor at that point if the court with jurisdiction is in a different Member State. We believe that in such circumstances the parties should be able to have the benefit of the safeguards provided by Articles 6 and 7.

To achieve this we suggest that rather than try and define what a cross-border mediation is it would be better to state the circumstances when the Directive would apply to cross-border disputes. This could be either at the point of the mediation or at the point at which a court is seized. We believe this objective could be achieved by the following provision:

1. This Directive applies if at the time the parties agree to mediate at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of any other party.

2. Notwithstanding paragraph 1, Article 6 and 7 of this Directive apply in relation to court proceedings following a mediation where the court seised is in a Member State other than a Member State in which at least one of the parties is domiciled or habitually resident.
We propose that we will define domicile and habitual residence by reference to Regulations 44/2001 (Brussels I) and 2201/2003 (the revised Brussels II). It should be clear then that the Directive would apply to the mediation, or in relation to any subsequent court proceedings, only where the parties are domiciled or habitually resident in different Member States, or a different Member State to the court seized.

It is theoretically possible that parties to a dispute who are domiciled or habitually resident in different Member States might be living or staying in third countries and decide to mediate in that third country. However we do not believe that such a mediation would be caught by the Directive because the Community cannot legislate for mediations outside the EU.

In our view our suggested definition has the virtue of being clear and simple. It respects the cross-border limitation of Article 65 TEC while not being too restrictive. It also has the advantage of following the model of the European Order for Payment in relation to the provisions on court proceedings in Articles 6 and 7.

Until we know what restriction the European Parliament will agree and until we have discussed this issue in the Council, I cannot say what type of restriction will be considered during future negotiations. However I thought your Committee would be interested to hear our thoughts on this matter now. I shall of course keep you informed of developments.

14 March 2007

Letter from the Chairman to Rt Hon Baroness Ashton of Upholland

Thank you for your letter of 14 March which has been considered by Sub-Committee E. We are grateful for the information you have provided for the Committee and also for giving us an opportunity to comment on the approach which the Government are likely to take in relation to the definition of cross-border dispute.

There is, we believe, a substantial measure of agreement between the Committee and the Government in this matter. First, we are at one in agreeing that it is necessary to limit the scope of the proposal. Not only is this required by Article 65 TEC but as you say the Community cannot legislate for mediations outside the territory of the Member States of the Union. However, we would have no objection to the Directive being expressly limited to mediations taking place within the Union. Given the consensual nature of mediation we see no problem were the parties to choose to mediate outside the Union. On the other hand, where enforcement of the mediation is sought within the Union it is legitimate, provided always there is a “cross-border” element (to which we return below), for the Community to lay down rules.

Second, we agree that the European Parliament’s text, as described on the second page of your letter, is unsatisfactory for the reasons you give. Your alternative is preferable. As you will recall from earlier discussions of “matters having cross-border implications” (for example, in the recent negotiations concerning the European Small Claims Procedure) a test based on the different domiciles/habitual residence of at least one or two parties may not always produce a result which everyone would consider “cross-border”. It may be purely accidental or inconsequential that one of the parties to the transaction or in the circumstances emanates from another Member State. Nevertheless, as you say, it is necessary to produce as clear and workable a solution as possible. Accordingly we can agree with the approach set out in your letter.

We would be grateful if you would write again when you have the text of the European Parliament’s opinion and the reactions of Member States to it. In the meantime the proposal is retained under scrutiny.

29 March 2007

Letter from Rt Hon Baroness Ashton of Upholland to the Chairman

I wrote to you on 14 March explaining the Government’s approach to a cross-border restriction in this proposed Directive. In your reply of 29 March you agreed that approach and asked me to write to you again when we had the text of the European Parliament’s opinion and the reactions of Member States to it.

The European Parliament adopted its opinion on 29 March. For your information I enclose a copy (not printed). The Civil Law Committee of the Council considered the Parliament’s amendments on 13 April.

As you will see, the final version of the European Parliament’s proposed definition of cross-border (amendment 15, Article 1a) is very much in line with our preferred approach. At the meeting on 13 April a majority of Member States either supported this text or thought it was a good basis for further discussion. Some of those were prepared to consider ways the scope might be made a little wider, but there was no consensus as to how that might be done. The European Commission conceded that it was prepared to accept a general limitation to cross-border disputes but it could not accept the proposed definition which it considered too narrow. Only a small number of Member States supported the Commission. We are waiting to see how the Presidency will take this forward. I shall of course keep your Committee informed of further developments.
Many of the Parliament’s other amendments, subject to minor drafting changes, have aligned the Parliament’s opinion with the Council text on which a common understanding was agreed on 2 December 2005. I shall comment on the main changes of substance.

**ARTICLE 1 (AMENDMENTS 12 AND 13)**

All but one Member State that commented on this Article, including the UK, called to retain the words in the Council text: “except when certain such matters are excluded from mediation by the relevant applicable law”. This is to ensure the instrument does not impose mediation in areas where there are already statutory procedures.

**ARTICLE 2 (AMENDMENTS 16 AND 17)**

There was general agreement that there was a contradiction between the references to mediation being voluntary in paragraph (a) and the fact that in Article 3 the text allows national legislation that makes the use of mediation compulsory. It was agreed that it was necessary to make a distinction between people participating voluntarily in the mediation process and the possibility of compulsory referral to mediation. It was suggested that a recital could clarify this and that in paragraph (a) the first reference to voluntary could be retained while the phrase at the end “provided that the voluntary nature of mediation is respected” should be deleted.

Most Member States thought that the additions to paragraph (b) over-complicated the text. However whatever changes were made there was a need for coherence with the working of Article 2a (2).

**ARTICLE 2A (AMENDMENT 18)**

All Member States that commented on this amendment, including the UK, wanted to remove paragraph 3 as this would introduce an element of State regulation to mediation.

**ARTICLE 3 (AMENDMENTS 19–21)**

No Member State saw a need for new paragraph 2a.

**ARTICLE 6 (OR 6A AS NUMBERED BY THE EUROPEAN PARLIAMENT) (AMENDMENT 28)**

We joined with other Member States in opposing the extension of this provision to include a ban on disclosure to third parties. This Article is meant to deal only with protecting the confidentiality of the mediation in subsequent court or arbitration proceedings rather than regulating confidentiality in mediation more generally. Only one Member State supported the European Parliament’s text.

We also led the majority opposition to including “other substantial reasons” in paragraph (a) as this is a vague concept which could lead to legal uncertainty. We also raised your Committee’s suggestion to refer to the public policy “of the Member State concerned”. We wait to see if the Presidency will take this forward.

**ARTICLE 7 (AMENDMENTS 29 AND 30)**

The European Parliament chose a formulation based on the Council text of 8 November 2005 (Doc 14041/05) which I sent you on 9 November 2005. In my letter of 5 January 2006 (which I see was incorrectly dated 2005) I explained that the first paragraph of this text had been further simplified by the Council to say:

“Member States shall ensure that parties who choose mediation to try to solve a dispute are not prevented from subsequently initiating judicial proceedings by the expiry of periods of limitation or prescription during the mediation process”.

We can accept either formulation as both simplify the Commission’s original text and allow Member States to decide the way the objective of this provision can best be achieved. Only two Member States expressed a preference for the European Parliament’s suggestion. All the others that commented wanted to retain the Council text as above.

We raised your Committee’s suggestion to delete the final words of paragraph 2. Again we wait to see if the Presidency will take this forward.
ARTICLE 7A (AMENDMENT 31)

The Government supports this provision which it believes will help to encourage the use of mediation. We already encourage lawyers to inform their clients about alternative dispute resolution. However the majority of Member States that commented were concerned about the obligation that would be placed on Member States and the practicalities of ensuring compliance.

ARTICLE 7B (AMENDMENT 32)

This is likely to be rejected by the Council. The Commission explained that only documents adopted by Member States or the College of Commissioners could be published in the Official Journal. The European Code of Conduct has been drafted by the mediation profession and the Commission had no desire to change the status of the document. However it did undertake to ensure the Code was translated into all official EU languages and to make it available on the website of the European Judicial Network in civil and commercial matters.

ARTICLE 8A (AMENDMENT 33)

All Member States that commented on this amendment, including the UK, said they could accept a general review but none could accept a review that included consideration of a future instrument for harmonisation of limitation and prescription periods.

ARTICLE 9 (AMENDMENT 34)

One Member State supported this provision but the Commission and all the other Member States that spoke opposed it because of practical and legal difficulties caused by leaving implementation of the Directive to the parties to the mediation. While many issues in UK mediation are governed by agreement between the parties (e.g. confidentiality clauses in agreements to mediate) we shared the doubts about how this provision would work where Member States were being asked to regulate self-regulation.

RECITALS (AMENDMENTS 1–11)

There was no support for a specific reference to consumer mediation (recital 5a) or to incorporating the principles of two Commission Recommendations into the text of this instrument (recitals 5a and 13). Apart from the issues already raised in the main text there was only very limited opposition from Member States to the other recitals.

We do not yet know how the Presidency plans to proceed with negotiations on this proposal. I shall keep you informed of future developments.

25 April 2007

NATIONAL CONTACT POINTS FOR RESTORATIVE JUSTICE (10575/02)

Letter from the Chairman to Gerry Sutcliffe MP, Parliamentary Under Secretary of State, Home Office

Thank you for your letter of 25 July 2006\textsuperscript{18} which was considered by Sub-Committee E at its meeting of 11 October 2006.

In light of the prolonged inactivity on this matter, we have decided to clear the document from scrutiny at this time. We would, of course, expect a fresh EM to be submitted to this House should work on the proposal be revived.

12 October 2006

\textsuperscript{18} Correspondence with Ministers, 40th Report of Session 2006-07, HL Paper 187, p 381.
POPULATION AND HOUSING CENSUSES (6768/07)

Letter from the Chairman to John Healey MP, Financial Secretary, HM Treasury

This proposal was considered by Sub-Committee E at its meeting of 25 April 2007.

We support initiatives to ensure the collection of relevant comparable data at European level and like you broadly welcome this Regulation. However we agree that it raises a number of concerns.

We would be interested to hear in more detail why the UK may have difficulties meeting an obligation to provide statistical outputs on non-core topics. Is the reason financial or is there a wider concern regarding the potentially discouraging effect collection of non-core statistics may have on those required to provide them?

We note the Government’s position as requires anonymised microdata. We consider that such data could be usefully collected, but agree that matters of security of access and confidentiality should be considered and provision should be made in the Regulation to ensure compliance with data protection rules.

Does the Commission now accept that it should undertake a full impact assessment before this proposal progresses further? It seems to us that this would be a very useful exercise and it is surprising that it has not already been carried out.

We have decided to hold the proposal under scrutiny.

26 April 2007

PROCEDURAL RIGHTS DURING CRIMINAL PROCEEDINGS (16874/06, 5119/07, 5872/07)

Letter from the Chairman to Rt Hon Lord Goldsmith, Attorney General, Office for Criminal Justice Reform, Home Office

This proposal has been considered by Sub-Committee E.

We note that efforts have been made to address the concerns highlighted in our recent Report Breaking the deadlock: what future for EU procedural rights? (2nd Report of Session 2006–07, HL Paper 20) in particular through closer alignment of the text of the Framework Decision with the ECHR and the Strasbourg Court and a more considered approach to distinguishing between rights based around Article 5 ECHR and those derived from Article 6 ECHR. It seems to us that some progress is being made, although it remains to be seen whether changes to either text will make it sufficiently attractive to achieve agreement in the Council.

We have decided to retain the proposal under scrutiny and would be grateful if you would keep us up to date with developments.

13 March 2007

PROHIBITIONS FROM CONVICTIONS FOR SEXUAL OFFENCES AGAINST CHILDREN (14207/04, 11434/06, 13524/06)

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

Thank you for your letter of 7 August 2006 which was considered by Sub-Committee E at its meeting of 25 October 2006.

We note your commitment to the proposed Framework Decision on prohibitions arising from sexual offences against children and look forward to hearing from you as regards the revised proposal which, in light of your assurances, we trust will be furnished promptly for scrutiny.

We have decided to retain the Sex Offences proposal (14207/04 and COPEN 133) under scrutiny.

26 October 2006

19 Refer to 7162/06 Disqualifications arising from criminal convictions in the EU.
Letter from the Chairman to Joan Ryan MP

The revised proposal was considered by Sub-Committee E at its meeting of 13 December 2006. The new texts raise a number of issues.

Scope and Purpose

Neither draft sets out clearly the scope of the Framework Decision, i.e. that it is to apply to situations where a criminal record check is being carried out on a person who has applied to work with children. In our view it would be helpful to include this in Article 1.

We note that the Government favour the Belgian “mixed approach” and we agree that a more ambitious aim is desirable. We consider it unfortunate that negotiations are underway on two separate proposals based on different principles. We are concerned that this may prevent proper consideration of the proposal and may lead to confused drafting and an unsatisfactory result. When will a decision be made as to which of the two proposals should form the basis of discussion?

We consider that the inclusion of administrative and other non-judicial sanctions is important for the UK in light of changes to the law outlined in your EM. What is the current position in the Council? What objections have been voiced?

Registration (Recording) Obligation

We note that some Member States do not include prohibition information in their criminal records. Why is this information excluded? Given that prohibition information may be relevant in considering and assessing convictions, why is its inclusion so problematic?

Obligation to Request Criminal Record Information from State of Nationality

It is not clear how the mechanism for requesting information from Member State of nationality when national criminal records are consulted would work in practice. The obligation to consult is drafted in the passive form and while we presume that this would be the responsibility of the Member States’ relevant authorities, it could, as drafted, be interpreted as the responsibility of the individual or organisation seeking the criminal record extract.

While we agree that there is a need to consult foreign national records in cases involving non-nationals, we are of the view that a general obligation might be more appropriate than a sector-specific approach. We would therefore support the deletion of this article from the current Framework Decision and the inclusion of a general provision in the Framework Decision on the organisation and content of the exchange of criminal record information. What are the Government’s views?

Recognition and Enforcement of Convictions and Prohibitions

We find the Presidency proposal complicated and ambiguous. A number of questions arise as to the way in which the proposed system is intended to work. Member States are to determine the “legal effects, including prohibitions” to be attached to convictions. Does this mean that the decision in the enforcing Member State to impose a prohibition is entirely separate from any prohibition imposed in the convicting Member State? If so, what weight (if any) does a prohibition in a convicting Member State have? How is the enforcing Member State to decide whether to impose a prohibition (particularly if there is discretion under its national law as to whether a prohibition should be imposed); will a court hearing be required?

Similar concerns arise in relation to the Belgian draft in cases where mutual recognition does not apply.

Non-recognition and Non-enforcement

The grounds for non-recognition and non-enforcement of prohibitions and/or convictions require further consideration in the Council. Do you agree that there may be cases in which recognition of a conviction (and not merely a prohibition) should be limited?
SHARING INFORMATION AND CHANGES TO CRIMINAL RECORD INFORMATION

We agree with the principle implicitly recognised in the Belgian draft that if the “no criminal record” status of an individual working with children changes then the Member State concerned should be informed. We are not convinced, however, that an obligation on the convicting State to inform the State where the convicted person lives or works of any conviction is the best way to ensure this. It is unclear, for example what the State of residence would be expected to do with this information where the convicted person does not work with children. In our view, the general principle that the Member State of nationality holds complete criminal record information should be adhered to; other Member States should only have access in cases where they have an obvious interest in the information conveyed.

The broader point at issue here is that of changes to criminal record information after a reply to a request for information has been given. This problem is present in all matters where criminal record information is being exchanged; it might therefore be better dealt with in a general manner under the proposed Framework Decision on the organisation and content of the exchange of criminal record information (which contains data protection provisions to prevent misuse of data obtained). One solution might be to require the Member State of nationality to provide updates each time the relevant criminal record changes to States which have previously requested criminal record information. The requesting Member State would notify the Member State of nationality when updated information was no longer required (e.g. where the relevant person no longer works with children, where the trial and sentencing of the relevant person has been completed etc.). Would the Government support a more general approach of this nature?

APPEALS

The scope of any appeals system needs careful consideration; the extent of any appeal will depend on the nature of the decision to recognise/enforce foreign convictions/prohibitions taken by the executing State. We would be grateful for clarification of the Government’s position.

We have decided to retain the proposal under scrutiny and take this opportunity to clear the previous draft (14207/04) from scrutiny.

14 December 2006

Letter from Joan Ryan MP to the Chairman

Thank you for your letter of 14 December in which you raised a number of questions about the above-mentioned documents. These documents were discussed by Sub-Committee E at its meeting on 13 December. I am very grateful to you and your Committee colleagues for the detailed consideration that you have clearly given to these proposals. I regret that I am not currently in a position to respond to the points that you have raised but will ensure that your comments are studied carefully and I will reply as soon as I am able.

16 January 2007

Letter from Joan Ryan MP to the Chairman

Thank you for your letter of 14 December 2006 seeking further clarification on issues arising from the deposited papers 11434/06 and 13524/06.

I will deal with your queries as best I can. However, I should stress that as the relevant papers are still very much work in progress, I may not be able to provide you with definitive answers as much of the detail is still being worked through in negotiations in the Council. Indeed, since the two papers were deposited with the Committee, the Presidency has sought further views from delegations on their understanding of the “principle of assimilation”.

SCOPE AND PURPOSE

I agree that the scope of the Framework Decision should be clearly articulated and officials will take up this point at the next Working Group meeting scheduled for 26 February.

The United Kingdom has been keen to include administrative and other non-judicial sanctions in the proposed Framework Decision. However, this has been rejected in the past because of the legal base of the Treaty on the European Union which defines the remit of the working group. The Treaty refers only to “facilitating and accelerating cooperation between competent ministries and judicial or equivalent authorities of the Member States, including, where appropriate, cooperation through Eurojust, in relation to proceedings and the
enforcement of decisions”. In addition, as a matter of policy, some Member States are reluctant to enforce any prohibition imposed by a non-judicial body because they feel that those bodies would not necessarily have the requisite authority (and checks and balances) of a court.

REGISTRATION (RECORDING) OBLIGATION

I understand your concerns but I think the key issue here is how the United Kingdom gains access to information on prohibitions imposed in other Member States. The negotiations in respect of this Framework Decision will ensure that happens.

OBLIGATION TO REQUEST CRIMINAL RECORD INFORMATION FROM STATE OF NATIONALITY

I agree that the mechanism for requesting information is not clear and we will raise this at the next meeting.

You raise concerns that the obligation to consult is drafted in the passive form. We agree this is a valid point and will draw this to the attention of the Working Group.

In relation to the exchange of information, our view is that in the context of this Framework Decision, in the first instance, we should only be focusing on those who are working with children. Therefore, we would only seek for employers who employ individuals to work with children to be able to request information on potential employees.

I note your support for the deletion of the article on the obligation to request information from this Framework Decision and the inclusion of a general provision in the Framework Decision on the exchange of criminal record information. However, I do not think that adding another provision to that Framework Decision would be helpful. There is a danger that by doing that, and effectively restarting negotiations, we will introduce unnecessary delay. I feel the best way forward is to approve the Framework Decision on exchange of criminal records at the earliest opportunity so that we can start to reap the benefits of that as soon as possible. Of course, this might mean that the Framework Decision on prohibitions will take longer to be agreed but by trying to combine the two Framework Decisions, the risk is that we see no benefit on either initiative for several years.

RECOGNITION AND ENFORCEMENT OF CONVICTIONS AND PROHIBITIONS

My interpretation of the Presidency proposal, based on the principle of assimilation, is that the decision in the enforcing Member State to impose a prohibition is entirely separate from any prohibition imposed in the convicting Member State. That is because the principle of assimilation requires enforcing Member States to give the same legal effects (including prohibitions) to foreign convictions as they do to national convictions, and thus the prohibitions imposed in the convicting Member State are irrelevant to this outcome. For example, if a French national was convicted for a relevant sex offence in France and moved to the UK, we would treat that individual as if he had been convicted of an equivalent offence under UK law and then impose prohibitions as we would have done in the case of a UK national. Thus, whether France imposed a prohibition on the individual would not be relevant to our consideration.

In relation to how an enforcing Member State will decide whether to impose a prohibition on a foreign national where there is discretion under national law, we envisage that the same procedures and rules would apply as with a United Kingdom national.

NON-RECOGNITION AND NON-ENFORCEMENT

Apart from the three grounds for non-recognition stipulated in the drafts, we do not believe that there would be any instances in which we would want recognition of a conviction to be limited. We would endeavour to give foreign convictions the same effect as national convictions and therefore the same rules would apply.
SHARING INFORMATION AND CHANGES TO CRIMINAL RECORD INFORMATION

Where the “no criminal record” status of an individual working with children changes, then I agree that the Member State of nationality should hold the complete criminal record and that other Member States should only have access in cases when an obvious interest arises.

In respect of overseas nationals, the Criminal Records Bureau (CRB) is currently limited to giving details (via its website) of authorities within other countries where employers can make requests for information on prospective employees. However that list is not comprehensive and those authorities may not be able to give the employers the details that they want. The Council Decision on the exchange of information extracted from a criminal record (adopted in November 2005) does in principle allow for information to be requested for employment vetting purposes but only where national law permits it. Currently, the CRB are consulting with individual EU Member States on the feasibility of exchanging information for employment vetting purposes.

Other than that, information may become available to police forces within the United Kingdom via Interpol (or similar). If the police deem that information to be sufficiently serious they could use their common law powers to inform an employer, in the interests of crime prevention.

In relation to changes to an individual’s criminal record, we share your concerns and are exploring a number of avenues to ensure that update to criminal records are shared between Member States.

Of course the new Safeguarding Vulnerable Groups Act 2006 will allow for continuous update for those subject to an existing record on the Police National Computer (PNC), whereby future convictions will be advised to the last known employer. This will in future include provision for overseas nationals as well. But where no PNC record exists, there is no mechanism for updating this information between different Member States.

Appeals

As you state, the extent of any appeal will depend on the nature of the decision to recognise/enforce foreign convictions/prohibitions taken by the enforcing Member State. As these details are still to be agreed, it is not possible at this stage to comment on what the appeals framework will comprise.

I welcome your contributions and we will reflect your comments when negotiating the draft Framework Decision at the next meeting in February. The UK is very keen to progress this work. The Home Secretary yesterday spoke with the German Justice Minister, Brigitte Zypries, to voice our support for the initiative and to request that the German Presidency give it the high priority that it deserves.

18 January 2007

Letter from the Chairman to Joan Ryan MP

Thank you for your letter of 18 January 2007 which was considered by Sub-Committee E at its meeting of 31 January 2007. We are pleased to see that a number of our concerns are being pursued in the Working Group.

Scope and Purpose

We note that the Presidency has sought views from Member States as to their understanding of the principle of assimilation and again would be grateful if you would let us know the outcome of that exercise.

You outline the objections to the inclusion of non-judicial and administrative penalties in the proposed Framework Decision. The need for administrative or non-judicial penalties to be covered will vary depending on the nature of the scheme to be adopted: if the final scheme includes mutual recognition of prohibitions (either fully or to the more limited degree proposed by the Belgian re-draft) a solution will have to be found. You said in your EM that the Government support the Belgian mixed approach: how will this system work in relation to UK-imposed prohibitions if they cannot be recognised and enforced abroad?

Registration (Recording) Obligation

If the final scheme is based on assimilation, the issue of inclusion of prohibitions in the criminal record is less important. Do you agree that the matter will require some attention if the final system is to incorporate an element of mutual recognition of prohibitions?
OBLIGATION TO REQUEST CRIMINAL RECORD INFORMATION FROM STATE OF NATIONALITY

We are disappointed, although not surprised given recent events, that you are unwilling to consider the inclusion of a general article on consultation of foreign criminal records in the proposed Framework Decision on the organisation and content of the exchange of criminal record information. There are clear benefits to be had in agreeing a comprehensive general rule around which sector-specific provisions can be based. Do you agree that where the extent of the obligation to request foreign criminal record information varies depending on the Framework Decision under which the matter falls, there is a risk that errors may occur?

RECOGNITION AND ENFORCEMENT OF CONVICTIONS AND PROHIBITIONS

We are grateful to you for setting out how assimilation would work in practice in the UK. Given that the offences to which this Framework Decision relates are set out in EU legislation, it should in principle be possible for Member States to equate foreign offences to their own. In the absence of a reporting role for the Commission, are any steps needed to ensure that Member States’ transposition of the offences listed in Articles 2, 3 and 4 of the Framework Decision on combating the sexual exploitation of children and child pornography allow easy identification of comparable offences across the Member States?

You say that in the UK the same rules and procedures will apply to the decision to impose a prohibition in the cases of nationals and non-nationals. It would appear, therefore, that when deciding to impose a prohibition on a non-national convicted abroad, the UK Courts will have regard to the age of the offender and the length of his sentence. In each case, the Court is also asked to make a judgment as to the risk of reoffending. Are the Government satisfied that the length of the sentence imposed by the convicting (non-UK) court is an appropriate ground on which to base any decision as to whether to impose a prohibition? Are sentence lengths for comparable offences broadly similar across the EU? Further, how is the Court’s discretion to be exercised: will it routinely request reports/psychiatric analysis/court transcripts and pleadings from the convicting court?

NON-RECOGNITION AND NON-ENFORCEMENT

You appear to be in favour of some grounds for non-recognition of convictions. The current draft Framework Decisions only contain provisions for non-recognition of prohibitions. We trust you will press for full consideration in the Council of appropriate grounds for non-recognition of convictions should the Framework Decision be based on the principle of assimilation.

SHARING INFORMATION AND CHANGES TO CRIMINAL RECORD INFORMATION

We are grateful for your outline of the current UK system for ensuring criminal record information is up to date and note your intention to explore this area with the Member States.

You say that where no PNC record exists, there will be no mechanism for updating criminal record information among Member States. Does this mean that a person who has been vetted and found to have no criminal convictions will slip out of the system? Should a record of all vetted individuals who do not have a PNC record be kept, to ensure that if they are subsequently convicted of an offence the relevant Member States can be notified?

APPEALS

We note what you say regarding the appeals framework and look forward to hearing from you on this point in due course.

We have decided to retain the proposal under scrutiny.

2 February 2007

Letter from Joan Ryan MP to the Chairman

Thank you for your letter of 2 February 2007 in response to my letter of 18 January 2007. I will answer the substantive points you raise in turn. Please note, however, that due to continuing negotiations, it is not possible to answer some of these questions with complete certainty.
SCOPE AND PURPOSE

In relation to how the Belgian mixed approach will work in relation to UK-imposed prohibitions being recognised and enforced abroad, this has not yet been resolved and will be considered as part of the ongoing negotiations.

REGISTRATION (RECORDING) OBLIGATION

We agree that whether prohibitions need to be included in the criminal record will certainly depend upon the system which is agreed upon. In the context of mutual recognition, this information would be essential.

OBLIGATION TO REQUEST CRIMINAL RECORD INFORMATION

In relation to the obligation to request foreign criminal record information, I recognise that if there is no generic article in the framework on the exchange of criminal records, there is a risk that errors may occur given possible inconsistencies in approach between other Framework Decisions. However, on balance, I think that this risk is outweighed by the real benefits of agreeing the framework on the exchange of criminal records as soon as practical.

RECOGNITION AND ENFORCEMENT OF CONVICTIONS AND PROHIBITIONS

In my previous letter, I stated that the Presidency sought the views from delegations on their understanding of the principle of assimilation. As part of that exercise, delegations were also asked what information would be needed from the country of nationality to assimilate the conviction. In our response, we stated that we would wish to see the details of the offence and conviction recorded in a way that was comprehensible to someone outside of that particular jurisdiction. We also suggested that stating that an offence was a sexual assault on a child aged x years or an adult would be preferable to simply referring to a conviction as a particular section of the Criminal Code.

When deciding to impose a prohibition on a non-national convicted abroad, in due course, this will fall to the Independent Barring Board (IBB) as provided for by the Safeguarding Vulnerable Groups Act 2006. In Scotland, these decisions will be made by the Central Barring Unit (CBU) proposed under the Protection of Vulnerable Groups (Scotland) Bill currently progressing through the Scottish Parliamentary process. The courts will have no role to play in this decision. It will be at the discretion of the IBB and CBU whether someone will be disqualified from working with children based on consideration of a wide range of factors other than convictions alone.

NON-RECOGNITION AND NON-ENFORCEMENT

In relation to grounds for non-recognition of prohibitions, the paper recognises that if assimilation is the agreed option, then Article 7 would become obsolete. We will consider what is appropriate in relation to the non-recognition of prohibitions and convictions following a decision on whether assimilation of the mixed approach will be adopted.

SHARED INFORMATION AND CHANGES TO CRIMINAL RECORD INFORMATION

I recognise that there is a gap in relation to updating criminal record information among Member States and we are considering ways in which we may be able to address this.

Once again, I thank you for your considered comments. The next working group meeting on this Framework Decision will be held in Brussels on 26 February and I will keep you informed of progress on this important piece of work.

26 February 2007

Letter from the Chairman to Joan Ryan MP

Thank you for your letter of 26 February 2007 which was considered by Sub-Committee E at its meeting of 21 March 2007.

We note that a number of issues we raised in our letter of 2 February 2007 have not yet been resolved and we look forward to hearing from you further on these matters in due course. It seems that progress on these is being delayed by the fact that a decision has not yet been taken as to whether the Framework Decision should
be based on the Belgian mixed approach or the principle of assimilation. What is the current thinking of the Working Group? When is a final decision expected to be made? Is there now a general understanding as to what is meant by “assimilation”?

We are grateful to you for setting out how recognition and enforcement of convictions would be undertaken in the UK. In our letter, we asked about comparability of offences and sentence lengths across the EU and we would be interested to hear your views on this.

It is disappointing that while you recognise the benefits of a general obligation to consult foreign criminal records and the risks of failing to provide for such a general obligation, you do not support its inclusion in the Framework Decision on exchange of criminal record information. Was this discussed in the Working Group?

The proposal is retained under scrutiny.

26 March 2007

Letter from Joan Ryan MP to the Chairman

Thank you for your letter of 26 March in response to mine of 26 February.

In previous correspondence, you suggested the inclusion of a general obligation in the Framework Decision on criminal records to consult the criminal records of the Member State of nationality in order to ensure that an individual’s criminal record is complete and up-to-date. Since I last wrote, there have been some developments on the Framework Decision to recognise prohibitions which relate to this issue.

As you will be aware, due to the difficulties in reaching consensus on the Framework Decision on prohibitions, the Presidency issued a paper to canvass delegations’ understanding of assimilation and how it would work in practice.

Having received feedback from the delegations, the Presidency (together with Belgium) formed the view that neither mutual recognition nor assimilation would provide the solution. Instead, the Presidency proposed that one way of addressing certain elements of the original initiative would be to focus on the efficient exchange of information on convictions, including those resulting in professional disqualification, and that the appropriate vehicle to take forward this aspect would be the draft Framework Decision on the organisation and exchange of criminal records.

This approach was considered by the Article 36 Committee in March. At that meeting, it was agreed to incorporate a provision into the Framework Decision on criminal records to ensure that, whenever a person asks for information on their own criminal record from the central authority of a Member State other than the state of the person’s nationality, the central authority of the Member State where the request is made must always request the person’s criminal record from the state of nationality. The state of nationality is similarly obliged to respond. This obligation will not come into force until the electronic transfer of information is possible. Also, it was agreed that, where professional disqualifications are entered into criminal records, there should also be an obligation on Member States to share that information. The wording of the amendment to the Framework Decision to cover this point has not yet been agreed at working group level. And it should also be borne in mind that this provision will only cover disqualifications arising from criminal convictions; other disqualifications (such as administrative prohibitions) will not be covered by the Framework Decision. The Government will, of course, strongly support any continuation of this work.

Unfortunately, it is not clear whether work on the Framework Decision on prohibitions will continue in its own right, given the amendments to the draft Framework Decision on criminal records. We are waiting to hear from the Presidency on the next steps and will update you in due course.

19 April 2007

PROTECTION OF THE ENVIRONMENT THROUGH CRIMINAL LAW (6297/07)

Letter from the Chairman to Gerry Sutcliffe MP, Parliamentary Under Secretary of State, Home Office

This proposal has been considered by Sub-Committee E which decided to retain the proposal under scrutiny. As you will be aware, the Committee examined the issues raised by Case C-176/03 in its Report, The Criminal Law Competence of the European Community (42nd Report, 2005–06) and we are holding under scrutiny a number of First Pillar proposals where the Commission is proposing the definition of criminal offences and/or the imposition of criminal sanctions. We are therefore not surprised to learn that the Government have serious difficulties with the present proposal.
We are grateful for the information provided in your Explanatory Memorandum and in particular for clarification of the position being taken by the Government in the Ship source pollution case. We share a number of the concerns you identify in relation to the present proposal. We agree that the definition of “unlawful” in Article 2(a) raises questions of *vires* and also of subsidiarity and we would be interested to learn whether other Member States share these concerns.

The removal of the list of Regulations and Directions (by which the scope of the Commission’s original proposal was limited) also raises questions of definition in relation to Article 3 (offences). Are you proposing that the text follows the approach taken in the Commission’s original draft Directive where there was a list of relevant EC Regulations and Directives? We also note that the Government have questioned whether there is competence to provide a tariff of minimum maximum sanctions as proposed in Article 5. Again we would be interested to know whether it is only the UK raising this issue.

You say that negotiations, at least in the Council, are likely to proceed on a conditional basis, following the precedent of the proposed IP Directive. Given the fundamental objections raised by the Government (and given the number of interventions in the litigation before the ECJ) we wonder how feasible such an approach is in the present context. We would be grateful if you would keep us informed of developments.

The Committee decided to retain the proposal under scrutiny.

13 March 2007

Letter from Gerry Sutcliffe MP to the Chairman

Thank you for your letter of 13 March. I note that the proposal remains under scrutiny for the reasons you give and I am pleased that you share the concerns that we identified in the Explanatory Memorandum.

You asked if other Member States shared our concerns about the effect of the definition of the “unlawful” in Article 2(a). The draft instrument was first discussed at a meeting of the substantive criminal law working group in Brussels on 16 March 2007. Around 15 Member States made the point that the instrument should not stray into purely domestic national law but should be restricted to community rules and implementing national law.

As regards Article 3, we agree that the absence of the list of relevant EC instruments as included in the Commission’s original proposal of 2001 is disappointing. At the working group meeting of 16 March we suggested that the adoption of the list approach to scope should be explored further. Some Member States supported this approach.

As regards the provision in Articles 5 and 7 dealing with minimum maximum penalty levels many Member States joined the UK in doubting that the EC has competence, on a proper interpretation of the European Court of Justice case C-176/03, to be so prescriptive. The UK and some other Member States also questioned whether, irrespective of competence, such prescription is desirable as a matter of policy.

It is apparent that many Member States are concerned about the utility of conducting negotiations on a conditional basis when so much of the draft could fall within the scope of pending judgment of the ECJ in the ship source pollution case. The UK suggested that it would be beneficial to continue to look at the whole instrument so that the various provisions of the proposal could be debated as a matter of policy irrespective of the final determination of the scope of EC legal competence. The consensus within the group was, however, in favour of focussing only on Article 3 and Article 2(a) pending the ECJ judgment. This will at least allow for a robust examination of the need to restrict the scope to community law and will also allow an assessment of utility of allowing administrative sanctions as an alternative to reliance only on criminal ones.

We will of course continue to keep you informed of any significant developments during the course of negotiations.

28 March 2007

REVIEW OF THE HAGUE PROGRAMME (11228/06, 11223/06, 11222/06)

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

This package of Communications was considered by Sub-Committee E at its meeting of 22 November 2006. We welcome these Communications and consider that they make an important contribution to the debate on the Hague Programme.
IMPLEMENTATION COMMUNICATION

Despite recent problems in decision-making in the criminal justice field, the Commission appears to be pressing on with the adoption of proposals envisaged under the Hague Programme. It is worthy of note that of the measures mentioned in paragraphs 50–51 of the Implementation Communication only one has been agreed in Council. The proposed Framework Decision on Procedural Rights has been under discussion for over two years and may be abandoned in favour of a Political Resolution. Do the Government agree that this leads to a significant waste of resources which might better be applied to other matters? What steps will be taken to address this issue?

More and more proposals on JHA matters appear to lack the necessary statistical data to support their adoption (e.g. Rome III, ne bis in idem, presumption of innocence). It is therefore disappointing that the proposals to improve collection and analysis of information (paragraph 43) had to be delayed and that Member States are not providing the Commission with necessary information (paragraph 52). In the context of the recent EU Strategy on crime and criminal justice, the Government expressed a strong commitment to the collection of crime-related statistics. We consider this to be a critical element for the future success of the Hague Programme and would welcome your assurances that the UK will fully support the Commission in its efforts to achieve this goal.

The Commission identifies a sharp contrast between what it calls the generally positive assessment of the adoption timetable for 2005 and the much more mixed results of the monitoring of national implementation of instruments adopted. We hope that the Government would support any initiative to ensure that all proposals agreed under the Third Pillar are implemented correctly and on time. Is there a case that the UK should accept the jurisdiction of the Court of Justice under Article 35 TEU to ensure that Framework Decisions are given proper effect in the UK? In the medium term, should not Member States consider providing for the Commission to bring infringement proceedings in this field?

EVALUATION COMMUNICATION

You say that the extent to which the Commission should be responsible for evaluating policies in every area is something on which you need to reflect further. Given that Member States are responsible for protecting national interests, do you agree that the Commission’s role in the evaluation process is essential to ensure that the interests of the Union and of Union citizens are protected? If the Commission is not to be responsible for this process, who is?

The Communication provides that national parliaments will be involved in the evaluation mechanisms (paragraph 13). What sort of role is envisaged for this Parliament here?

The Commission expects the first policy review to take place in 2007 (paragraph 38). What do the Government understand to be the purpose of this review? What is the difference between that review and the present exercise?

Under policy area “Establishing a genuine European area of justice in criminal and civil matters” (page 61) one of the Commission’s objectives is to “explore common definitions and procedures for human trafficking and cross border crimes”. Do the Government support the agreement of common definitions in this area? To what extent do the Government agree with the other objectives in Policy sub-area 2 (criminal matters) listed by the Commission?

THE WAY FORWARD COMMUNICATION

You say that you need to consider the full implications of the absence of the Constitutional Treaty before identifying priorities under the Hague Programme. Have you begun work on this? When are you likely to be in a position to let us know your views on this matter?

In paragraph 22 of your Explanatory Memorandum, you explain that you “do not support harmonisation of substantive civil law as an end in itself”. It is not clear to us what is meant by this and we would be grateful for clarification.

We note your view that as regards the approximation of criminal procedural law “serious consideration should be given to non-legislative measures as a viable alternative to the current programme”. Does this mean that
you no longer support any of the relevant legislative measures contained in the Hague Programme? What is the basis of your objections?

The Committee has decided to hold these Communications under scrutiny.

23 November 2006

Letter from Joan Ryan MP to the Chairman

Thank you for your letter of 23 November 2006 regarding the above three documents. I am sorry not to have provided an earlier reply. I shall try to answer in turn the questions you raise under each of the communications.

Communication on Evaluation

On monitoring operational action, the Government agrees that operations conducted by EU agencies need to be subjected to transparent, objective and thorough evaluation. Frontex is to be evaluated during the second half of 2007. The evaluation will cover the first year and a half of the agency.

The government believes that the development of Rapid Border Intervention Teams is a natural progression for Frontex. The development of RABITs will be another tool available to Frontex to deal with the ever changing situation at the European Union’s external borders. We see no reason to delay the creation of RABITs until after Frontex has been evaluated.

With regards to the role of the Commission in the evaluation process, we do agree that the Commission’s role here is important. However, it may, for example, simply not be appropriate for the Commission to be responsible for evaluating policies in every area; other options may exist. This would be true where certain areas are already undergoing evaluation. For example, we have urged the Commission to place reliance on the peer evaluation exercise already commenced on the European Arrest Warrant because any additional parallel evaluation as envisaged in the Communication would amount to duplication of effort for no real benefit. This same principle would apply to money laundering evaluation and to the evaluation of Frontex planned for 2007.

The Government believes that an Evaluation Forum would provide an ideal opportunity to develop, over time, an evaluation centre of excellence in which progressive evaluation programme design could be developed in accordance with changing needs. The exact make-up and structure of the Forum is yet to be considered in detail but the UK envisages one in which choices on the focus of evaluations and the most appropriate mechanisms are made. We also believe that the idea could be usefully extended to embrace all policy areas.

The Commission’s Communication does indeed envisage a role for national parliaments in the evaluation of the second stage evaluation reports, which would be based on the data provided by Member States using the medium of the proposed “fact sheets”. As yet the Commission have not amplified on this aspect of the proposed scheme, presumably pending the outcome of the current consultation phase, and we can therefore offer no further explanation for the time being.

The purpose of the Commission’s first policy review is to evaluate the implementation of particular instruments, and to assess the impact of it in individual Member States and cross border. It will also help to identify key policy areas where action at the EU level is workable, practical and cost-effective, and which would provide a sound evidence base for future policy and programme formulation. We strongly support this process—however the timetable could be seen to be overly ambitious given that responses to the paper have only just been returned and the process of reviewing has not yet been agreed. It is unlikely any reviewing will start before the end of the year.

The present exercise is to establish whether or nor Member States think a review would be beneficial and if so, which policy areas should be reviewed first. The UK has made use of this to suggest a prioritisation of certain areas, such as cross-border serious crime and judicial co-operation founded upon mutual recognition, rather than attempting to cover every suggested instrument in depth.

Overall, the UK supports evaluation and we see real benefit in a system that can help to inform discussion on future policy-making in the area of freedom, security and justice. If EU policies are to be effective in delivering their intended outcomes and informing subsequent policies, there must be appropriate means to evaluate them and to identify obstacles to their success. But it is essential that it be flexible enough to be workable and incremental so that realistic progress can be made. A tailored approach, rather than a “one-size-fits-all” mechanism, is vital—only then can we be sure that evaluation in this field will achieve its aims. The Government believes that the evaluation process should complement and not replace the reviews which the Commission is obliged to undertake on each instrument.
 Regarding policy sub-area 2 (criminal matters), the UK does not think that the various references to “reduce differences” is an appropriate conclusion at this stage. We are not convinced of the need for, for example, common definitions, penalties and trial procedures as there is no evidence that the area of European justice is constrained by variations in definitions of crimes and penalties. Furthermore, we would want firm evidence that common definitions and procedures were actually needed for Article 31 TEU purposes. One of the aims of an appropriate evaluation of instruments in particular policy areas should be to make, as part of the assessment of effectiveness, an assessment of the problems, should there by any, created by differences in offences and penalties etc. The UK is however a strong supporter of the other objectives that will enhance mutual recognition and confidence in other Member States legal systems.

**IMPLEMENTATION COMMUNICATION**

You question whether the time spent on discussing the Framework Decision on Procedural Rights has been a waste of resources. It is true that discussions have been going on for a long time and that considerable time and effort has been spent on trying to reach agreement. It would be wrong to give up too easily on a measure that would add real value to existing arrangements. But the Government has made clear its view that the ECHR already provides the necessary safeguards in this area and given that there appears to be little prospect of agreement on the sort of legislative instrument envisaged by some we have urged other Member States to give serious consideration to non-legislative alternatives.

On the collection of crime-related statistics the Government has indeed expressed a strong commitment to this activity and we shall continue to support the aim of the Commission in this area.

Your Committee raise the issue of the ECJ and its jurisdiction under Article 35 TEU to monitor the implementation of Framework Decisions. We are not currently aware of any divergence in interpretation across the Union of third pillar measures. The Government is satisfied that UK implementation is in line with that of other Member States, and we monitor rulings of the ECJ in relation to this closely. However, we are concerned that this would result in a backlog of cases stayed whilst awaiting a ruling from the ECJ, which currently takes nearly two years to hear a case. We would want to be satisfied that the ECJ had the resources, procedures and structures in place to handle any increase in caseload. There is no provision under the current EU Treaty providing for an infraction procedure under the 3rd pillar. This would have been a consequence of the exercise of the passarelle provision in Article 42 TEU, and of the merger of the pillars under the Constitutional Treaty, and will have been considered by Member States in these contexts.

**THE WAY FORWARD COMMUNICATION**

With regard to the collation of Country of Origin Information (COI), we had a number of concerns about the initial proposals for implementing the Hague Programme recommendation that Member States should jointly compile, assess and apply information on countries of origin. As you may be aware, the Commission initially envisaged the development of a comprehensive central database, with all the factual information provided either in English or other languages as necessary, to be used by all Member States to the exclusion of other COI, in the expectation that this would ensure that claims for asylum would be identically considered in all Member States.

The COI compiled and disseminated to decision makers and others involved in the asylum determination by the Home Office COI Service is considered by other Member States to be extremely valuable, and is often one of the first resources to be consulted by researchers and decision-makers, particularly those in the newer Member States. In part this is due to the presentation of the material, in the form of COI Reports, which provide as balanced a picture of the prevailing conditions as possible, with direct links to the actual published sources. The COI Reports—which are subject to independent external scrutiny—act as “intelligent filters” to ensure that the most accurate, up to date and relevant material is provided directly to users. This ensures that all decision makers are directed to the same material, reducing the likelihood of random selection of unsubstantiated or biased material, which is inherent in a system whereby all COI material is downloaded permanently onto a database, irrespective of its merit or currency.

In response to Member State’s concerns, in particular strong evidence that other Member States would continue to populate and maintain their own databases, the Commission subsequently revised its proposals to establishing common guidelines for the use of factual COI; finding a solution to translation needs; and establishing as soon as possible a common portal, that is to say an electronic solution by which all MS can access all the existing Member State’s databases. The UK of course does not maintain a database, and
currently makes little if any use of COI provided by other Member States, in most cases because the COI collated is not make publicly available, and therefore does not conform to our high standards of transparency.

However, together with colleagues from Belgium, Denmark, France, Germany, the Netherlands and Poland, the UK has been active in developing guidelines which clearly set out the minimum standards for the collection and use of COI, which it is hoped will in due course be adopted to all Member States. We are also working with other EU colleagues on a project which will result in Member States that have a great deal of expertise in claims from certain nationalities—for example Poland with regard to claims made by Chechens—"sponsoring" countries, and providing a service to COI researchers and decision makers throughout the EU. We consider these to be very valuable initiatives, and fully in keeping with the Hague recommendations. We will continue to work closely with EU colleagues on the compilation and assessment of COI, but we reserve our right to continue to collate our own COI, as appropriate to our needs, and which is relevant, reliable, current, objective but which is also obtained solely from sources which are, or can be made available, to asylum seekers and their representatives.

On harmonisation of substantive civil law, paragraph 22 of our Explanatory Memorandum was intended to convey that we do not see harmonisation of law as something that should be done for its own sake. That does not mean, however, that we are against harmonisation where it serves a clear purpose, for example where it is necessary to facilitate some important aim which we support, such as mutual recognition.

With regard to the Data Protection Framework Decision (DPFD), considerable progress has been made but it was always likely to be a difficult dossier to negotiate due to its complexity and the sensitivity of its subject matter. The Government is committed to agreeing adequate data protection standards at EU level and continues to support the swift conclusion of negotiations on the DPFD.

The German Presidency, with broad support from the rest of the JHA Council, is proposing to transpose parts of the Prüm Treaty into EU law. The Prüm Treaty is not expected to affect the DPFD but once the DPFD is agreed it will cover all EU police and law enforcement measures, including those derived from the Prüm Treaty. It should also be noted that as an individual instrument Prüm does have its own data protection articles that will protect any data until the DPFD comes into force. The Prüm Treaty deals with the availability of certain data for police and law enforcement agencies. In this way it can be seen as implementing the guiding principle behind the Principle of Availability, in that relevant data should be accessible to law enforcement authorities. We do not expect there to be further discussion on the Framework Decision on the Principle of Availability until after the issue of transposing parts of the Prüm Treaty into EU law has been resolved.

The UK remains committed to the Hague Programme but also acknowledges that the circumstances surrounding its adoption have now changed. Against the background of the “period of reflection” over the Constitution Treaty, the Programme can perhaps be seen to be overly ambitious. We believe that it would be more beneficial to citizens to focus our efforts on delivering practical results and EU measures that make a real difference, rather than seeking unanimity on harmonisation measures.

I hope that I have answered the questions set out in your letter, and that the Communications can be released from scrutiny.

8 February 2007

Letter from the Chairman to Joan Ryan MP

Thank you for your letter of 8 February which was considered by Sub-Committee E at its meeting of 7 March 2007.

We are grateful to you for your detailed reply which has been helpful in clarifying the Government’s position on a number of issues.

In your letter, you did not provide us with your views on what should be the priorities under the Hague Programme, although we note that you consider that efforts should be focussed on delivering practical results and EU measures that make a real difference. We look forward to hearing from you further on this in due course.

We would be grateful to see a copy of any response to the Communications prepared by the Government.

As you know, Sub-Committee F has also been examining these Communications. Both Committees have now completed their scrutiny and have decided to clear the documents from scrutiny.

8 March 2007
Letter from Joan Ryan MP to the Chairman

Thank you for your letter of 8 March replying to mine of 8 February and asking for views on what the priorities of the Hague Programme should be.

As I said in the debate in the House of Commons on 30 November last year and as the Government has consistently made clear in discussions with other Member States, our top priorities are strengthening our borders, stopping organised criminals, improving access to justice and preventing terrorist attacks. We do not believe there is a need to engage in a wholesale renegotiation of the Hague Programme. The majority of its principles remain sound and with the action plan it sets out a comprehensive programme of work. But we have made clear to EU partners the need to keep under review what our priorities should be and how they should be delivered, particularly in the action plan, both in the absence of the Constitutional Treaty and in the light of difficulties experienced in negotiating certain criminal law dossiers such as the measure on procedural rights for defendants.

The Government believes we should press forward with the mutual recognition programme, including in areas such as criminal convictions and prisoner transfer, but we need to find more fruitful ways than legislation to improve co-operation in criminal procedural law. We should continue to develop an intelligence-led approach to policing at EU level and to improve the way we exchange information, including on criminal convictions, in a way that protects individual rights. We have also pressed for even greater weight to be placed on achieving JHA objectives through working outside the EU in co-operation with foreign affairs colleagues.

In the field of civil and family justice the Government would like to see a more strategic approach to the development of policies with a proper evidence base for proposals. This will mean we can give priority to measures that are likely to deliver the greatest benefit to citizens.

Practical action to manage migration and the security of our borders remain a priority. On asylum it is important that the first phase, which has been successful in managing secondary movement of asylum seekers, is properly evaluated before we consider the next steps. We have many examples of the importance of co-operation on counter-terrorism but for practical operational reasons as much as anything else we need to be clear that the EU’s main role in this area is to support the efforts of Member States, not to try and direct or control counter-terrorist operational activity itself.

27 March 2007

Letter from the Chairman to Joan Ryan MP

Thank you for your letter of 27 March which was considered by Sub-Committee E at its meeting of 18 April 2007.

It is helpful to know what the Government’s priorities under the Hague Programme are likely to be. We note your support for the mutual recognition programme, although it is disappointing that it has not been possible to make worthwhile legislative progress in the area of criminal procedural law, and we hope that over time attitudes on this may change.

You say that there is no need to engage in a wholesale renegotiation of the Hague Programme. We would be grateful if you would keep us updated as to any discussions on revising the Hague Programme.

19 April 2007

RIGHT TO VOTE AND STAND AS A CANDIDATE IN ELECTIONS TO THE EUROPEAN PARLIAMENT (5204/07, 5214/07)

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

These documents were considered by Sub-Committee E at its meeting on 21 February. We note that the Government consider the removal of the attestation procedure and of the exchange of information regime to be sensible steps. We agree and support the less burdensome approach now being proposed by the Commission.

The Committee decided to clear the documents from scrutiny.

22 February 2007
ROME I: LAW APPLICABLE TO CONTRACTUAL OBLIGATIONS (5203/06)

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

Thank you for your letter of 20 July 2006 which has only recently been considered by Sub-Committee E. We are most grateful for your clear description of the Government’s negotiating objectives and for outlining the proposed timetable of the negotiations. We are pleased to see that the Government are working closely with interested parties with the aim of ensuring that the Regulation is brought properly within the scope of the Treaty and, most importantly, provides a clear and workable set of rules to which the UK might wish to become a party.

We note in particular that the deletion of Article 8(3) is “a major negotiating objective”. We are also pleased to see the importance which the Government attach to limiting the scope of application of the Regulation (removing the principle of universal application from Article 1) and for providing some flexibility in Article 4 (applicable law and the absence of choice). We would be interested to learn, in due course, what support there is for the Commission’s proposal to go beyond the Convention in relation to agency (Article 7) and also voluntary assignment and contractual subrogation (Article 13).

The Committee decided to retain the proposal under scrutiny and would be grateful if you would keep us informed of developments. Your letter of 20 July provides an excellent example of how this can be done both clearly and concisely. We would be grateful if you could pass on our thanks to all those concerned in its preparation.

19 October 2006

Letter from Rt Hon Baroness Ashton of Upholland to the Chairman

I am writing to update you on developments on Rome I, in particular the production of the latest Presidency text which was published on 2 March and the report by Dr Maria Berger MEP, former Rapporteur to the JURI Committee of the European Parliament. I am sorry that I have not updated the Committee on this dossier since your last letter of 19 October last year.

As you know, although the Government decided that the United Kingdom should not formally opt-in to the negotiations on Rome I, we have been actively participating in the negotiations in the Council Working Group and have maintained close links with the European Parliament as it discusses the draft Regulation.

Discussions in the Council Working Group have been progressing at a rapid pace. During the Finnish Presidency, three Working Group meetings were held, which completed the initial consideration of the Commission’s proposal and produced a new Presidency text on 12 October 2006. This was based on discussions in the Working Group up to that point and also on written comments, including those of the UK, which Member States were asked to submit.

So far this year the German Presidency has held four Working Group meetings, one in January and two in February (which concluded initial consideration of a subsequent Finnish/German Presidency text of 12 December) and a further meeting in March. The outcome of the discussions in January and February resulted in the production of the new text dated 2 March, a copy of which is attached. A further Council Working Group has been scheduled to take place on 27–28 March and the Presidency has signalled its intention to put Rome I on the agenda for both the April and June Justice and Home Affairs Councils in order to get political agreement on a number of articles.

Our main concerns continue to centre on Article 8(3) which deals with the application of the mandatory rules of third countries, Article 5 (consumer contracts) and Article 13 (voluntary assignment and contractual subrogation). There is also a further issue relating to a Presidency proposal to consider the comprehensive coverage of insurance contracts within the Rome I proposal. My Department, in conjunction with the Treasury, are currently consulting on this and I attach a copy of the consultation document. The Council negotiations so far have met our concerns on some of these issues, notably Articles 4 and 7. However we are still some way off a position where we could consider opting in to the final Regulation.

I draw your attention to the following Articles in the next text:

**Article 3(5)**

The Presidency proposed an amendment to this provision in light of comments made in relation to Article 5 and the protection provided by the Consumer Directives. The proposed rule appears to envisage the application of mandatory rules of Community law in a way that would both create legal uncertainty and restrict the application of the law chosen by the parties. This provision was discussed by the Working Group on 12 March, but was not supported by the majority of Member States. The Presidency agreed to retain the current rule which is in line with the equivalent provision in Rome II.

**Article 4 (The Default Rules)**

We are encouraged by the main thrust of the Presidency text which generally meets UK concerns by introducing greater flexibility to the default rules. We are cautiously optimistic that we will obtain a satisfactory outcome in this important area.

**Article 4A (Contracts of Carriage)**

The Presidency have proposed a new Article to cover contracts of carriage. In relation to contracts for the carriage of goods the proposed rule is becoming increasingly complex but any problems which this might cause should be strictly limited in practice because, as a general rule, commercial parties in this field tend to choose a specific applicable law. In relation to contracts for the carriage of passengers, the Presidency has opened up a wide area of debate with no less than four new options which are yet to be considered by the Working Group. These options reflect the desire among some Member States to establish a greater degree of consumer protection in this field than currently exists under the Rome Convention. My officials are currently consulting on this matter but initial views are that any option that removes party autonomy would be unwelcome and could pose significant difficulties for commercial operators.

**Article 5 (Consumer Contracts)**

Business stakeholders have expressed concerns about Article 5 on the basis that it does not strike a satisfactory balance between the interests of business and consumers. The situation is further complicated by the fact that, whether or not the UK becomes a party to Rome I, it will be that instrument, and not the Convention, which will in the great majority of cases apply to British businesses in dispute with consumers living in the rest of the EU (except Denmark). It is clear, however, from discussions in the Working Group that it is unlikely that the main thrust of the proposed rule for consumer contracts will be altered.

We continue, however, to press for modifications particularly in relation to an exclusion for goods and services and a financial carve out for City Instruments. There is strong support for the latter provision within the Working Group and we have been encouraged by the recent Commission proposal in this area which was briefly presented to the Working Group on 12 March. The Commission’s proposal is based on those financial instruments defined in EC Directive 2004/39. We are currently discussing this proposal with Treasury and commercial stakeholders.

**Article 5A (Insurance)**

This is a relatively new provision and one that the UK has so far indicated a general scepticism about. My Department, in conjunction with the Treasury, are currently consulting with the insurance industry to ascertain the advantages/disadvantages of such a provision and its impact, and to identify any issues which may be insurmountable. The formal UK position will be formulated after analysis of their views.

**Article 7 (Agency)**

This provision, particularly in relation to its application to third parties, was of concern to commercial stakeholders. We are encouraged by its deletion from the text and we are hopeful of a satisfactory outcome on this particular issue.
**Article 8(3) (Mandatory Rules of a Third Country)**

The deletion of Article 8(3) would remove the single most objectionable aspect of the Commission’s proposal. We had until recently been cautiously optimistic that it would be simply deleted from the text. However, several Member States have now spoken in favour of its retention and the Presidency have now agreed that there should be further discussion on the matter, including consideration of possible compromise solutions. We are consulting with City stakeholders as to which compromise would be acceptable.

**Article 13 (Assignment)**

Article 13(3) (the proposed rule to govern the priority of claims between competing assignees) is also of significant concern to commercial stakeholders. The UK has tabled an amendment, which proposes that priority issues should simply be subject to the law of the assigned debt under Article 13(2). This would be a straightforward and workable solution that would properly respect the principle of party autonomy and accord with the reasonable expectations of the parties. The initial response to this proposal in the Working Group was favourable. Member States are, however, currently considering it further with their own experts. If accepted by the majority it would resolve an area of significant difficulty for the UK.

The next meeting of the Council Working Group on 27–28 March will consider the new Presidency text, but in particular discussion will focus on those areas where there has been points of contention. The aim is to try and find a basis for compromise as the German Presidency aim to be in a position to take a package of measures to the Council in April for agreement.

**Discussions in the European Parliament**

Discussions in the European Parliament have also continued. Dr Maria Berger presented her report to JURI Committee on 11 September 2006. A copy is attached. In our view, her report was broadly welcome in the light of our concerns. In particular we welcomed her proposal to delete Article 8(3) of the Commission’s proposal which deals with the application of the mandatory rules of third countries; this was the single most significant issue of concern to UK stakeholders. We also welcomed her proposal to re-draft Article 4 which would introduce a greater degree of flexibility for cases where there is no valid choice of law by the parties. However, the report proposed no substantial amendments to Article 5 (consumer contracts), Article 7 (agency) or Article 13 (voluntary assignment and contractual subrogation). We are continuing to engage with Cristian Dumitrescu, the new Rapporteur, and other interested MEPs on these issues and the draft Regulation as a whole as discussions in the European Parliament progress. I will continue to keep the Scrutiny Committees informed about the progress of these discussions and those in the Council Working Group.

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

Thank you for your letter of 22 March which has been considered by Sub-Committee E. We are grateful for sight of the latest Presidency text and also to receive your comments on the more controversial changes being discussed. We note that you make no reference to the question of scope of application. We trust that this is not simply an oversight as we are concerned by the uncertainty raised by a number of the changes proposed, including those to Article 1 and Article 22(a)(2).

As you say, there have been some improvements, in particular the deletion of Article 7. But, unhappily, as one problem disappears another two (Articles 4(a) and 5(a)) arise. As regards Article 4(a), options 1 and 3 appear preferable to options 2 and 4, which could lead to as many laws as passengers on board one ship. The provisions on insurance appear to be based on an over simplistic model of insurance; for example, they may not be capable of catering sensibly for a group insurance or multiple risks or the same risk situated in many countries. We are pleased to see that you are consulting with experts and interested parties on these new provisions.

We are also interested to see that you are in discussion with City stakeholders as to whether a compromise can be reached as regards Article 8(3) (mandatory rules of third countries). I hope you will agree that this is not an area where a political “fudge” would be acceptable. Indeed we would be surprised if City interests would accept anything which was not 110% certain.

On the question of assignment (Article 13), you say that the UK has tabled an amendment. On the texts we have seen, the proposal in footnote 35 appears preferable, particularly because of clause (e).
You make clear that the German Presidency is pushing for some measure of political agreement on the Regulation. We would be interested to learn of the outcome of the discussions in the Justice and Home Affairs Council next month and look forward to hearing from you. In the meantime the proposal is retained under scrutiny.

28 March 2007

ROME II: LAW APPLICABLE TO NON-CONTRACTUAL OBLIGATIONS (16231/04, 6622/06)

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

I am writing to bring your Committee up to date with recent developments on this draft Regulation.

On 25 September the Council agreed a Common Position which has been subsequently accepted by the Commission (copy enclosed (not printed)). The file has therefore returned to the European Parliament and in the first instance to the JURI Committee. I expect that the report of that Committee will be published in December and a completed Second Reading from the Parliament as a whole early in the New Year. If, as seems likely, the Parliament proposes some amendments to the Common Position, these proposals will be referred back to the Council to decide which of them should be accepted.

Accordingly this stage in the procedure represents an opportunity for the Government to attempt to persuade the JURI Committee of the merits of some amendments that would improve the text of the Common Position. The scope for so doing is limited in that the Parliament is in principle only able at this stage to propose amendments in areas where it has previously proposed amendments.

On this basis I intend to put forward amendments in two areas. The first concerns product liability cases. These are covered by Article 5 in the Common Position and my proposal is that this provision should be deleted. In the Government’s view no special rules are required for cases of this kind which could indeed be dealt with adequately under the general rules in Article 3. Any special rules would inevitably create complexity and legal uncertainty as to whether a particular case falls within their scope. Article 4 in its current form is particularly unsatisfactory; its cascade approach and rules of exception make it excessively complex and likely to prove difficult to operate satisfactorily in practice.

The second area concerns torts which result purely economic damage in different countries. These cases might be anti-trust claims which presently fall under Article 6; they might also be claims falling under Article 4 which might, for example, relate to the giving of negligent financial advice and information.

In such cases the current rules in the Common Position give rise to the application of several, perhaps many, different national laws, with each such law applicable only to the damage which has been suffered in one particular country. This will be the situation notwithstanding the fact that all the damage caused arises out of a single sequence of events which takes place largely or entirely in one country. This would be an unduly complex outcome that would be likely to result in increased costs of litigation.

Perhaps it would be helpful if I gave an example of the sort of case with which we are concerned. A company is floated on the London stock market. In connection with that floatation the company provides information about itself for potential investors. After the floatation problems emerge with the company and the investors, who may be situated in many different countries, suffer financial losses as a result. They bring proceedings in London on the basis that the information provided by the company was inaccurate in certain important respects and that they were induced to invest in the company on the basis of this inaccurate information. Under Article 4(1) the applicable law is that of “the country in which the damage occurs irrespective of the country in which the event giving rise to the damage occurred”. This produces the application of all the national laws of the many countries where the economic damage has been inflicted and in respect of which claims have been brought. Such a result would greatly, and I would argue unnecessarily, complicate the litigation.

In the light of the prospect of difficult cases of this kind we are proposing amendments that would seek to identify a single applicable law. In broad terms these would reflect the current position in this country under Part III of the Private International Law (Miscellaneous Provisions) Act 1995 which has generally worked well in practice. For these cases we envisage the application of the law of the country where the tort occurs or, in more complex cases where elements of the tort occur in different countries, the application of the law of the country where the most significant elements of the tort occur. An amendment of this kind to Article 4 would also enable Article 6(3) to be deleted, thereby achieving a welcome simplification of that provision.

I should also provide some further background information about Article 9, which is a special rule for industrial action. This rule, which was strongly lobbied for by two member states in particular, would displace the general rule in Article 4(1). In general terms this would mean that in respect of a claim relating to liability
arising out of an industrial action the law applicable is to be that of the country where the action took place rather than that of the country where the damage occurred. The rationale behind this special rule is that it would be inappropriate for the lawfulness of a strike in one country to be challenged under the law of another country. The Member States generally accepted that this was an area of particular sensitivity that justified a special rule. An example of the kind of case which would be subject to this rule is where a port in country A is blockaded as a result of strike action and the ship carrying the claimant’s goods is prevented from unloading those goods, thereby causing economic damage in country B where the claimant has his business. Claims in tort relating to this strike would be subject to the law of country A, and not to the law of country B.

22 November 2006

Letter from the Chairman to Rt Hon Baroness Ashton of Upholland

Thank you for your letter of 22 November which was considered by Sub-Committee E at its meeting on 13 December. The Committee is grateful for your providing a copy of the final version of the Common Position and for setting out the current procedural position relating to the negotiation of this Regulation.

We are pleased to see that violations of privacy and rights relating to personality are to be excluded by Article 1(2)(g) and to learn that the Government are putting forward a proposal to delete the special rule relating to product liability. The reduction in the number of special rules is to be encouraged as the Committee indicated in its 2004 Report.

We support the amendment being proposed in relation to torts resulting in purely economic damage in different countries. We agree that such a measure would improve legal certainty and simplify litigation. It would also render Article 6, itself a problematic provision, largely redundant. The general rule in Article 4, together with the Government’s amendment to deal with the “mosaic” problem, should suffice.

We also believe that Article 7 remains problematic. The reference to Article 174 of the EC Treaty (in Recital 22) could encourage much argument as to what is embraced by this special rule. We believe that if any special rule is needed it should be balanced as between claimants and defendants and much clearer in its terms.

Finally, we are grateful for your explanation of Article 9 (industrial action). We note that this rule has been introduced at the behest of two Member States in particular.

The Committee decided to retain the proposal under scrutiny but at the same time to clear Document 16231/04 which contains an outdated text. We would be grateful if you could keep us informed of developments. As you indicate, the next step will be the response of the European Parliament at the end of its Second Reading.

14 December 2006

Letter from Rt Hon Baroness Ashton of Upholland to the Chairman

Thank you for your letter of 14 December. I am writing to you now to update you on the further developments in the European Parliament on this draft Regulation.

As you know, following the Council’s agreement of a Common Position in September last year, the file was initially considered by the JURI Committee of the Parliament in late December. That Committee agreed a significant number of amendments to the Common Position, the majority of which were agreed by the Parliament as a whole on 18 January. I enclose a copy of the Parliament’s Second Reading Report which will be considered by the Council at a meeting of the Working Group on 12 February. It, as seems likely, the Council agrees to reject all the Parliament’s amendments, the conciliation procedure would then take place to attempt to reach an agreement between the Parliament and the Council and I will update the Committee again at the end of this process.

In order to facilitate such agreement, we intend to urge the Council to accept the Parliament’s amendments, albeit with modifications, in two areas. Firstly, in the area of unfair competition (Article 6 of the Common Position), the Parliament agreed to accept Diana Wallis, the Rapporteur’s, proposal that the Council’s special rule for these types of cases was unnecessary and should be deleted. As I outlined in my previous letter, we intend to continue to support deletion of Article 6. We will also put forward a modification to the general rule in Article 4 to deal with torts which result in purely economic damage in different countries. However, we are aware that there is likely to be little support in the Council for these measures, particularly any amendment to the general rule, at this stage in the negotiations.

Secondly, the Parliament agreed an amended clause that would provide for a review of Rome II after it had been in force for some time. The review clause may become crucial in the conciliation process as a means of achieving agreement between the Parliament and Council and we intend to continue to express support for an appropriately-worded clause.
There are however a number of areas where we cannot support the Parliament’s amendments. These include defamation where the Parliament voted to reintroduce the Rapporteur’s original solution. We welcomed the Council’s decision to exclude defamation and the scope of Rome II and we do not believe that the Rapporteur’s solution, which in our view is unduly complex, presents any viable alternative to this.

Of our remaining areas of concern, the UK previously urged the deletion of the special rule for product liability cases (Article 5 of the Common Position) but this was not subject to amendment by the Parliament. We also supported the Rapporteur’s proposed deletion of the special rule for cases involving environmental damage which was accepted by JURI but not by the full Parliament. It is therefore almost certain that the final instrument will contain special rules for both these types of cases as agreed in the Council Common Position.

15 February 2007

Letter from the Chairman to Rt Hon Baroness Ashton of Upholland

Thank you for your letter of 15 February which was considered by Sub-Committee E at its meeting on 7 March. We are grateful for your keeping us informed of developments. We note that there is little support for removing the special rules relating to product liability and to environmental damage. On the other hand we hope that we will be able to retain support for the exclusion of defamation and privacy cases from the scope of the Regulation.

As you know there is a substantial degree of common ground between the Committee and the Government in this matter and we wish you and your officials every success in the final stages of the negotiation.

The Committee decided to retain the proposal under scrutiny.

8 March 2007

ROME III: LAW APPLICABLE IN MATRIMONIAL MATTERS (11818/06)

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

The proposed Rome III Regulation was examined by Sub-Committee E its meetings on 18 October and 1 November. At the first meeting the Committee had the benefit of hearing from your officials and also Professor Paul Beaumont, Special Adviser in your Department and in the Scottish Executive. It was very helpful to have them explain the detail of Rome III and to indicate those issues to which the Government were giving further consideration. As you are aware, the timing of the meeting was not perfect in that the Government were in the final stages of reaching their decision on whether to opt in to the proposal. We have now learned that the UK has not opted in. We nevertheless hope that the following will be of assistance to the Government.

As you may know, in addition to our usual scrutiny we have been specifically requested by COSAC to consider whether Rome III complies with the principles of subsidiarity and proportionality. This is an exercise in which all national Parliaments have been invited to participate. We are in the process of reporting our conclusions to COSAC but would like to take this opportunity to write to you directly setting out our views which we hope will be helpful to the Government as the negotiations on Rome III proceed.

Although the COSAC exercise is directed at subsidiarity and proportionality, it is necessary first to consider the question of vireo. If the Treaty does not give the Community the necessary power to act, no question of subsidiarity arises. As the evidence of your officials and special adviser and of other parties has revealed, the present proposal raises both vireo and subsidiarity questions.

The Commission’s draft Regulation refers to Article 61(c), which in turn refers to Article 65. Article 65, you will recall, provides:

“Measures in the field of judicial cooperation in civil matters having cross-border implications, to be taken in accordance with Article 67 and insofar as is necessary for the proper functioning of the internal market, shall include . . . (b) promoting the compatibility of the rules applicable in the Member States concerning the conflict of laws and of jurisdiction”.

Accordingly measures under Article 61, which can include harmonising conflicts rules, must relate to matters having cross-border implications and be necessary for the proper functioning of the internal market. We note that the Czech, Dutch and Scottish Parliaments have queried the “necessity” of the present proposal, as have other interested parties. Professor Beaumont told the Committee that neither the Commission nor the Court of Justice in fact attaches much weight to the wording of Article 65. This gives us concern. We believe that the Commission should indeed make out a case for legislative action demonstrating clearly the relationship with the internal market. In this context, and also in relation to the application of the principle of subsidiarity, we
are impressed by the criticisms made by interested parties of the statistical analysis set out in the Commission’s Impact Assessment on which the Commission bases its case for legislative action. We think they make a good point.

Further, even if a case can be made for a measure harmonising conflict rules within the Union it is necessary to look critically at each and every provision of the proposal to ensure that the measure is necessary for the proper functioning of the internal market. For example, Article 7, which provides a residual jurisdiction rule which could fill a gap in a few Member States’ laws, appears to relate to persons who have little connection with the internal market or the free movement of persons.

As regards the application of the principle of subsidiarity, our starting point is that harmonisation of conflict of laws rules is expressly contemplated by the Treaty as one means by which the Community will establish an area of freedom, justice and security. There is already a substantial body of Community private international law, including jurisdictional and recognition rules relating to matrimonial causes and child custody. As the Commission states, no Member State acting alone is able to solve the sorts of problems described by the Commission. Harmonising jurisdictional and conflicts rules internationally is not something which can be achieved by an individual Member State, at least if it is to be done on the basis of reciprocity and mutual recognition. The appropriate level is the international, not the national one.

Nevertheless, in order to ensure compliance with the principle of subsidiarity, the Commission is required to make the case for legislative action. The criticisms of the Commission’s statistical analysis (mentioned above) are also relevant when considering whether the Commission has substantiated its reasons for Community legislation. The limitations of the study and the substantial variation in the figures raise doubts as to whether the conclusions which the Commission seeks to draw for the whole Union are justified. We question whether the statistics provide a safe basis on which to act and we agree with the Scottish Parliament that further qualitative research should have been conducted.

Under the principle of proportionality the form of Community action should be as simple as possible and also leave as much scope for national decision-making as possible. In this context the Impact Assessment sets out and evaluates a number of options. However, we note that this aspect of the Assessment has also met with criticism from practitioners, particularly as to the conclusions drawn by the Commission on the practicalities and costs of implementing the Commission’s preferred options. It is, we believe, significant that the large majority of, if not all, Member States would be required to change their laws substantially. There may also be substantial costs in ascertaining, and difficulties in applying, foreign law. We question whether the Commission appreciates the full implications of its proposal and whether the objective might be achieved by simpler, possibly less prescriptive means.

It has been suggested that if the jurisdictional rules (Brussels II) were to be improved then it would not be necessary to harmonise applicable law rules. We are impressed by the arguments raised by academics and legal practitioners in this respect and the latter’s concern that the Impact Assessment does not adequately address this issue. We conclude that there are doubts whether the proposal is of a proportionate response in the circumstances.

Finally, we have considered the potential effect of Rome III on the so-called “rush to court”, the risk of which would, in the Commission’s view, be greatly reduced by the introduction of harmonised applicable law rules. Again, there is a lack of information as to the scale of the problem: such evidence as there is appears to be anecdotal. We are, however, impressed by the views of practitioners that the new Regulation would continue to present parties with a variety of jurisdictions and that rush to court would not be prevented where there was no agreement between the parties on jurisdiction. Further, Professor Beaumont confirmed our understanding that rush to court may be driven by property (maintenance and division of property) and child custody/access considerations rather than the substantive law divorce to be applied. As you are aware the Commission’s Green Paper on conflict of laws in matters concerning matrimonial property regimes is subject to separate scrutiny by the Committee.

2 November 2006

SCRUTINY OF COMITOLOGY AND OF CONFIDENTIAL DOCUMENTS

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

Thank you for appearing before Sub-Committee E on 1 November 2006. The Committee welcomed both the opportunity to discuss the proposed use of the passerelle with you, and your undertaking to respond in writing on the other subjects that we had proposed for discussion. Having regard to the points you made during the
evidence session, we will concentrate these questions on issues which have arisen in recent scrutiny of matters for which you are responsible.

On the issue of the scrutiny of comitology decisions:

We understand that the Commission is preparing a comitology decision to implement a mechanism to verify progress on post-accession judicial reform and measures against corruption and organised crime in Bulgaria and Romania. Would this be a suitable decision to deposit for scrutiny?

On the issue of the scrutiny of confidential documents:

What assessment is made of Council documents prior to the decision to publish them as restricted documents? Is there a case for a more careful assessment of documents to ensure that only those which are genuinely sensitive are withheld from this Committee and from the public?

Has thought been given to anonymising (ie removing specific Member State references from) revised proposal drafts to allow them to be submitted for scrutiny, and thereby ensure that Committees are considering the latest position in the Council? What would the objections be to leaving in any references to the UK’s position?

The Committee looks forward to receiving your response.

3 November 2006

Letter from Rt Hon Geoff Hoon MP to the Chairman

Thank you for your letter of 3 November in which you asked about the scrutiny of comitology and of confidential documents.

The Commission are proposing to adopt a Regulation establishing a Justice & Home Affairs monitoring mechanism for Romania and Bulgaria based on the Act of Accession. In accordance with this, Member States will be consulted on the proposal, but the content and adoption of the measure will ultimately be a matter for the Commission. Nonetheless, this is a potentially important measure, which we are therefore proposing to deposit for scrutiny.

On the scrutiny of confidential documents, the Council Decision adopting the Council’s security regulations (28 February 2001) sets out the levels of classification and the application of those levels. The regulations set out that information shall be classified only when necessary and shall be maintained only as long as the information requires protection. The regulations also set out that the classification of a document shall be determined by the sensitivity of its contents in accordance with a clear definition set out in the regulations (Section II, paragraphs 1–4). The regulations also make clear that over classification can result in a loss of confidence in the validity of the classification system.

We have confidence that the system appropriately balances the need to protect national and EU interests with the need for openness in the EU decision-making process.

However, I think it important to say, that we have rarely declined to deposit a document due to its security classification. But where we have done so, we have submitted an explanatory memorandum (without the document itself) explaining the key points.

You ask whether anonymising draft texts would enable them to be declassified. Unfortunately, I do not believe so. Making differences between the Member States public would weaken the EU’s common position once it was reached. This could then be exploited in the EU’s engagement with third countries and international organisations.

My officials will pass a copy of the 106 page Council Decision adopting the Council’s security regulation (28 February 2001) to both the Clerk to the Commons Committee and the Clerk to the Lords Committee.

20 November 2006

Letter from the Chairman to Rt Hon Geoff Hoon MP

Thank you for your letter of 20 November which was considered by Sub-Committee E at its meeting on 13 December. We are most grateful for the explanations you have given.

The proposed Regulation establishing a JHA monitoring mechanism for Romania and Bulgaria raises the wider issue of scrutiny of EU delegated legislation. You will recall that we had an exchange of letters on this subject back in the summer and I think it would be helpful if the question of how to identify legally, politically or practically important comitology measures could be revisited.
As regards the question of the confidentiality, we are grateful for the efforts which the Government have made to ensure that Parliament can scrutinise significant proposals. We are disappointed if not entirely surprised that you have rejected our suggestion that documents might be “anonymised”. We must continue, therefore, to rely on reports in the media describing the positions of Member States and would encourage the Government to be as open as possible when dealing with Parliament’s scrutiny of EU legislation.

14 December 2006

Letter from Rt Hon Geoff Hoon MP to the Chairman

Thank you for your letter of 14 December about the scrutiny of new comitology procedures.

Officials from the Foreign and Commonwealth Office and Cabinet Office met with officials from your Committee and the House of Commons Scrutiny Committee in December to discuss this issue. Work is ongoing on drawing up a detailed proposal. I hope to be able to write to the Committees soon to seek your agreement of the procedures we will suggest.

22 January 2007

SERVICE OF JUDICIAL AND EXTRAJUDICIAL DOCUMENTS IN CIVIL OR COMMERCIAL MATTERS (11131/05, 16372/06)

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

Thank you for your letter of 25 July 2006 which was considered by Sub-Committee E at its meeting of 18 October 2006.

We note that a general approach was agreed at the June Council meeting on the basis of a revised text. While it appears that the majority of the changes are not significant (we did not receive a copy of the revised proposal with your letter), we are disappointed to see the addition of a new recital regarding the single fixed fee. You will recall that the Committee was strongly in favour of transparency of costs and the requirement for a single fixed fee would be an important means of improving such transparency. We understood that the objective of the revised Article 11(2) was to introduce a single fixed fee for service in each Member State. This interpretation is supported by your letter dated 22 March 2006 in which you say that you can “support the Presidency text which now stipulates that there should be a single fixed fee in each Member State and that Member States should notify the Commission of how this fee should be paid” (emphasis added). We would be grateful if you would explain why it was thought necessary to amend the recitals and what the practical effect is likely to be on fees for service in Member States.

19 October 2006

Letter from Rt Hon Baroness Ashton of Upholland to the Chairman

Thank you for your letter of 19 October. I note your comments on the addition of a new recital regarding the single fixed fee. The issue of costs was one of the most contentious during the negotiations. There was a range of opinions with at one extreme Member States who wanted there to be no costs at all while at the other Member States who wanted no restriction on the costs that could be levied.

The original compromise was for Member States that wanted to set a charge to have a single fixed fee. As I explained in my letter of 25 July, the final agreement was that Member States should be able to set different single fixed fees for different types of service.

I presume that in practice most Member States that charge fees will set only one fixed fee. France, for example, already has a fixed fee of €69. Where a Member State opts for a range of fixed fees they will have to be clear as to how they are setting these fees. For example fees set for service of different types of document or categorised in any other way will have to be clearly stated and will be transparent in the sense that those wishing to initiate service will know what they are before service is effected. Importantly the requirement that these fees must be proportional and non-discriminatory remains.

It should be remembered that those who request the service of documents are not obliged to use a method which incurs fees for the use of judicial officers and bailiffs. They can all opt to use postal service instead and under the revised Regulation the requirement of Member States to accept postal service under the same conditions—ie by registered letter with acknowledgment of receipt or equivalent—makes it even easier for people to choose postal service without having to research the requirements of each Member State.

You also mention in your letter that you did not receive a copy of the revised text with my letter of 25 July. I did not send the text then as the European Parliament’s amendments, which I did enclose, followed the same wording as that revised text apart from some minor differences in wording in the recitals. For ease of reference I enclose the text with this letter.

2 November 2006

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

Thank you for your letter of 2 November 2006 which was considered by Sub-Committee E at its meeting of 29 November 2006.

We note that although the original compromise was for Member States who wanted to fix a charge to have a single fixed fee, the final agreement was that Member States should be able to set different single fixed fees for different types of service.

In your letter of 22 March 2006, on the basis of which we cleared this proposal from scrutiny (at your request in light of proposed agreement of the text at the April JHA Council), you said that, “we can support the Presidency text which now stipulates that there should be a single fixed fee in each Member State and that Member States should notify the Commission of how this fee should be paid”. We expressed our commitment to transparency of fees both in our reply of 24 April 2006 and in our earlier letter of 9 February 2006.

Given the material nature of the change, it is disappointing that you did not resubmit the proposal for scrutiny, particularly as agreement was not in the event sought at the April JHA Council. In future we would expect proposals to which material changes have been made following clearance from scrutiny by this Committee to be resubmitted to us for further consideration.

30 November 2006

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

Thank you for your letter of 30 November. I note your continued concern about the provision in this proposal for Member States to set fees for service.

I do of course appreciate how important it is to inform your Committee of any material changes to proposals and will ensure that we continue to do so. As I have explained before, the Government believes strongly that the question of whether there should be costs for service should be a matter for each Member State to decide but, as I said in my letter of 20 January, we believe that any provision on fees must strike the right balance between respecting that right to set a charge while ensuring that the charge set will be known to parties in advance and will not be an extortionate amount.

While negotiating this proposal we were of course mindful of your commitment to transparency of fees. However we took the view that the proposed change does not affect materially our shared position on this issue. The change to this provision is not to the text of the proposed Regulation but rather to the corresponding recital. Member States who levy charges will be required to set fixed fees for each type of service. These fixed fees must be set in a manner which is proportional and non-discriminatory and will be known to requesting parties beforehand.

The problem with the current Regulation is that the party requesting service in some Member States is unable to determine how much the fees are likely to be. Under the current wording of the proposal the costs will be transparent because that party will know exactly how much he or she will be expected to pay. While there will no longer be a requirement on Member States to set one single fixed fee I suspect that in most cases that it what they will do. However even if they choose to set a number of different fees for different types of service—in effect a scale of charges—the requirement remains that these fees must be fixed. On the basis of this information the party will be able to decide whether to serve the relevant documents through the authorised servers in the Member State concerned or to bypass the resulting costs by using service by post instead.

Therefore I am satisfied that this proposed change will continue to provide transparency of fees and will be a significant improvement over the current Regulation.

7 December 2006

Letter from the Chairman to Rt Hon Baroness Ashton of Upholland

Sub-Committee E considered the above proposal (16372/06) at its meeting on 31 January 2007.

Thank you for providing the Committee with the amended proposal, which consolidates the original Regulation and the amendments. We note that no substantive changes have been made since we last considered the proposal and have decided to clear it from scrutiny.

25 January 2007

STATISTICAL ADVISORY BOARD (14240/06)

Letter from the Chairman to John Healey MP, Financial Secretary, HM Treasury

This proposal was considered by Sub-Committee E (Law and Institutions) at its meeting of 13 December 2006.

We support measures to enhance the independence, integrity and accountability of national and Community statistical authorities and welcome the Commission’s proposal.

We are interested to hear that concerns have been raised by other Member States regarding the “tasks, scope and membership of the Board”. What are these concerns and are they shared by the Government?

It seems to us that an important element of the Board’s work will be reviewing the activities of Eurostat (a Directorate-General of the Commission) and advising the Commission with regard to the implementation and updating of the European Statistics Code of Practice. We therefore agree that it may not be appropriate for the Commission to appoint the Board’s chairperson. Should the Council have exclusive say over the Board’s chairperson? Is there a role for the European Parliament here?

We have decided to hold the proposal under scrutiny.

14 December 2006

SUCCESSION AND WILLS (7027/05)

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

Thank you for your letter of 4 September 2006 which was considered by Sub-Committee E at its meeting on 25 October. We fully support the Government’s Response to the Commission and are pleased to see that the Government share all the concerns of the Committee set out in my letter of 13 June 2005.

We note that views have been expressed in the European Parliament in support of legislative action at Union level. We agree with the Government that any such action needs to be based on proven need and be consistent with both the Better Regulation principles and with subsidiarity. Like you we will be watching developments with interest.

The Committee decided to clear the proposal from scrutiny.

26 October 2006

SURRENDER PROCEDURES BETWEEN THE EU AND ICELAND AND NORWAY (8762/06, 9226/06)

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

Thank you for your letter of 12 September 2006 which was considered by Sub-Committee E at its meeting of 25 October 2006.

We note your response to the points raised in our letter. We are left with the impression that you are simply reluctant to pursue these additional matters at this stage in the negotiations. While we appreciate that in discussions among 27 States any agreement reached is often fragile, it is disappointing that small modifications which could lead to greater certainty and cohesion with other European instruments appear to be rejected as a matter of course. In such circumstances, you will agree that deposit of documents at the earliest possible stage is critical to ensure that the Committee can play a meaningful role in the elaboration of such instruments.

The Commission decided to clear the agreement from scrutiny.

26 October 2006

SUSPENDED SENTENCES AND ALTERNATIVE SANCTIONS (5325/07)

Letter from the Chairman to Rt Hon Baroness Scotland of Asthal,
Minister of State, Home Office

This proposal was considered by Sub-Committee E at its meeting of 21 March 2007.

We consider that the proposed Framework Decision is to be welcomed. However, we agree that a number of issues will have to be resolved.

SCOPE

We note that the Government are concerned that the current scope of the proposal is too wide. You say that in your view “the main benefits would flow from transfer of supervision of more serious offenders following their release from custody”. We find this surprising and would be interested to hear why you consider this to be the case. What benefits would flow here which would not apply equally to less serious offenders with non-custodial sentences?

Is the question of scope something which has been discussed in the Working Group? If so, what was the reaction of other Member States?

DISPARITY OF ALTERNATIVE SANCTIONS

You suggest that there will be “considerable devil in the detail” given the disparities in legal and practical provision for alternative sanctions across Member States. Since this is an initiative of France and Germany, there appears to have been no impact assessment on the extent and nature of the problem. It seems, however, that such an analysis could prove useful here. Has any statistical and/or comparative work been carried out and if not, do you agree that it may be helpful to undertake further research before agreeing the Framework Decision?

TRANSFER OF JUDGMENT

Article 5 provides that a judgment may be transferred to the State of legal and ordinary residence of the accused if it includes specified or agreed measures. It would appear that the drafting needs some attention because the Article does not seem to cover the case of a suspended sentence where no conditions are attached. Second, the Framework Decision does not set out a mechanism for the sentencing State to follow when taking a decision to transfer. Should the Framework Decision list relevant criteria to be taken into account? Should it specify that the sentenced person has the right to be heard before any decision is taken?

GROUNDS FOR REFUSAL TO RECOGNISE JUDGMENT

Article 9 allows the executing State to refuse to execute a judgment where, under its law, the sentenced person cannot be held criminally responsible for the relevant act because of his age. While the general effect of a higher age of criminal responsibility is to protect young people, in cases such as this one and the related European Supervision Order proposal, it leads to young people being put in a less advantageous position than adults: where an adult can return to his home State, a young person may be forced to remain in a foreign country for the duration of the sentence. Thus while the intention is laudable, the effect of the provision is most unfortunate. What are the Government’s views?

We note that, unlike in the case of the European Arrest Warrant, all the grounds for non-recognition are discretionary and not mandatory. Is this an intentional departure from the previously agreed instrument?
COMPETENCE FOR SUBSEQUENT DECISIONS

We agree that the practicality and desirability of allowing Member States to reserve competence for subsequent decisions regarding conditional sentences requires further consideration. What discussion has there been in the Working Group? If the provision on reserving competence is retained, do you consider that the Article 7 obligation on the executing State to recognise the judgment and arrange the necessary supervision should apply?

REVOCATION OF SUSPENSION

It is not clear what happens should the competent State decide to revoke the suspension of a sentence. If the sentencing State remains competent to take subsequent decisions, it seems that it may request the return of the individual to its territory, but is not obliged to do so. Are the Government content that another Member State could order, without recourse to relevant UK authorities, the revocation of a suspension or imposition of a sentence and thereby oblige the UK to arrest and imprison an individual?

Where the sentencing State remains competent for subsequent decisions, the Framework Decision envisages a hearing prior to any revocation of a suspension or imposition of a sentence. Should there be a similar requirement where the executing State is competent for subsequent decisions?

The Committee has decided to retain the proposal under scrutiny.

26 March 2007

Letter from Rt Hon Baroness Scotland of Asthal to the Chairman

Thank you for your letter of 26 March 2007. The Committee asked for further information following its further consideration of this draft Framework Decision (report number 28287). I will deal with each of the points in turn.

SCOPE OF THE INSTRUMENT

You asked why we consider that the main benefits would flow from the transfer of supervision of more serious offenders following their release from custody. We believe that the real value will be the opportunity to rehabilitate and resettle offenders released on licence from custody, who have perhaps been imprisoned for some time. Offenders who commit less serious offences and who receive short community sentences should not raise such substantial potential public protection and resettlement issues. As I commented in my previous letter, there are also issues of practicality and the effort required to transfer sentences. The continuing discussions are exposing the difficulties and the likelihood that the least serious sentences will require the most bureaucracy, which would outweigh any potential benefits of transferring such sentences.

There have been some discussions on the scope of the instrument and there are, broadly speaking, currently two schools of thought: those who want the Framework Decision to be as wide as possible because it is thought in principle to be a good thing; and those who, like us, want it narrowed down to those areas where it can do most good. It has been noted that that the purpose of the Framework Direction is not only to reap the benefits of mutual recognition but also to introduce simplicity given that it is generally accepted that the 1964 Council of Europe Convention on the supervisions of conditionally sentenced or conditionally released offenders has proved to be unworkable.

DISPARITY OF ALTERNATIVE SANCTIONS

The Committee suggests that an impact analysis would be of benefit on the extent and nature of the problem in relation to the disparities and practical provision for alternative sanctions across Member States. The Presidency has already done some work around this by issuing a questionnaire to Member States, which provided greater clarity on the definitions used and asked for comments, and also asked for confirmation or otherwise of the availability of various sanctions currently listed in Article 5 that implementing States may be asked to supervise. This is a starting point and the responses are likely to be discussed at the next meeting on 3 May.
TRANSFER OF JUDGMENT

The Committee raised a number of points in relation to Article 5. The issue of suspended sentences without conditions has not yet been raised and it is not clear whether any Member States impose such sentences. In England and Wales, suspended sentence orders imposed under the Criminal Justice Act 2003 should have at least one requirement set by the court. In Scotland there is no legislative provision for suspended sentences.

Transfer of a judgment would only take place if the offender voluntarily decided to go to the Member State in which he is ordinarily resident, and where the sentencing and implementing States agreed the transfer. Paragraph 10 of the recitals, for example, makes the position clear about the voluntary nature of the initiative.

GROUNDS FOR REFUSAL TO RECOGNISE JUDGMENT

The Committee raises the issue of young offenders being in a less advantageous position than adults given that an implementing State could refuse to recognise and execute a judgment if the offender could not be held criminally responsible for the offence because of his age under its law. This is correct but the instrument would otherwise be unworkable. Such cases are likely to be very rare given that this would only be likely to affect the very youngest offenders. There may also be cases where implementing States refuse to recognise judgments if the sanctions cannot be adapted to meet its own law or where the sentencing State refuses to accept possible adaptations. This may also give rise to some offenders being disadvantaged but I think we have to accept that there will be differences in the domestic law of 27 Member States that makes it inevitable that some transfers cannot take place.

The grounds for non-recognition are discretionary and not mandatory under the draft Framework Decision as the whole process is voluntary for the person affected (and the two Member States), unlike the position where someone is the subject of a European Arrest Warrant. Article 3 of the EAW contains three mandatory grounds for non-recognition, but Articles 3(1) and (2) would not be relevant in the context of this Framework Decision. Article 3(3), which relates to the age of criminal liability, is an optional, not mandatory ground in this Framework Decision, to minimise the risk of disadvantaging young offenders identified by the Committee. The Government does not consider that any of the grounds for refusal should be mandatory.

COMPETENCE FOR SUBSEQUENT DECISIONS

There has been some discussion about the sentencing State reserving competence for subsequent decisions relating to the transferred judgments. We are strongly of the view that this is wrong in principle and unworkable in practice.

It seems likely that from the last meeting that suspended sentences would in all cases be fully transferred to the implementing state given that subsequent decisions would be straightforward, for example, breach would trigger the custodial sentence imposed by the sentencing State. But some Member States have conditional sentences where the sentencing decision is suspended but requirements are imposed on the offender. If the requirements are completed satisfactorily then the matter is discharged, but if not the case must go back to court for sentencing and a custodial sentence is not necessarily the only option. It is difficult to see how the transfer of such sanctions could be dealt with, given that the sentencing decision itself is suspended, other than by the sentencing State reserving its powers to deal with subsequent decisions. But we consider that these sanctions should not be within the scope of the instrument, not least because of the practical difficulties of the case going back and forth between States for decisions to be made and possible adaptations to the sanction to be agreed. Our concern is that the greatest level of bureaucracy would be created for the least serious sanctions, which, in our view, would outweigh any benefits of transfer.

We consider that if the sentencing State does have the power to reserve competence for subsequent decisions then Article 7 would still be required as supervision, subject to any adaptations, would transfer to the implementing State.

REVOCATION OF SUSPENSION

As noted above, we believe that it is wrong in principle for the sentencing State to reserve competence for subsequent decisions. In our view, this instrument is designed to promote mutual recognition and that means that judgments should be transferred wholly to the implementing State, where this is agreed. We do not consider it right that the UK courts should be bound by decisions made in another jurisdiction.
On the detail of Article 15, the Committee has asked whether the implementing State, where appropriate, should be required to hold judicial hearing prior to any revocation of the suspension of a sentence or resentencing. There has been some discussion of the drafting and a number of Member States are concerned that there should be no additional obligations imposed by the instrument. In some jurisdictions there is not always a requirement for a judicial hearing prior to making certain decisions and the general view was that States should use their usual processes when making decisions. It is likely that the first sentence of Article 15, paragraph three will be deleted.

19 April 2007

TAKING ACCOUNT OF CONVICTIONS IN NEW CRIMINAL PROCEEDINGS (7645/05, 10676/06, 13568/06)

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

Thank you for your letter of 19 September 2006 which was considered by Sub-Committee E at its meeting on 25 October. We are grateful for the detailed explanations you have provided. There remain only two outstanding matters.

First, as our sister Committee in the House of Commons has indicated, there remains some uncertainty as to the precise scope of the obligation in Article 3 and we share the concern that the Framework Decision might more clearly state, in the body of the text, that the courts in one Member State would not be obliged to take into account a previous foreign conviction for conduct which does not constitute a crime in that Member State.

Second, as regards the application of the principle of subsidiarity, you say that it is unlikely that those Member States who are not party to the 1970 Convention will become such a party. You add: “It is the case that certain Member States are currently unable to take into account foreign convictions.” What rule prevents them from doing so? Why is a Framework Decision the only way to remove that Disability?

The Committee decided to retain the proposal under scrutiny.

30 October 2006

Letter from Joan Ryan MP to the Chairman

I am responding to the issues raised by the Committee in its letter of 30 October concerning the above draft Framework Decision. The Government is at this stage content with the draft Framework Decision. Outstanding issues have been addressed and the Finnish Presidency is aiming to secure its adoption at the December Council.

I also enclose the latest text of the draft framework decision of 18 October 2006.

In its recent letter, the Committee states that there remains some uncertainty as to the precise scope of the obligation in Article 3 and indicates that it shares the concern that the Framework Decision might more clearly state, in the body of the text, that the courts in one Member State would not be obliged to take into account a previous foreign conviction for conduct which does not constitute a crime in that Member State.

The Government is satisfied that the Framework Decision does not limit the application of dual criminality. This is made explicit in the recitals which state that there is no obligation to take into account previous convictions in cases where a national conviction would not have been possible regarding the act for which the previous conviction had been imposed. It is not, from our point of view, vital that the operative part of the Framework Decision states that the application of dual criminality is not limited, since the Framework Decision itself has no direct legal effect. Since the recitals unambiguously state that dual criminality applies, we will ensure that we implement the Framework Decision in a way which reflects this.

Regarding the concerns of the Committee on the scope of Article 3, the latest draft of the Framework Decision states that previous foreign convictions should be “taken into account to the extent previous national convictions are taken into account and equivalent legal effects attached to them as to previous national convictions, in accordance with national law.” We are satisfied that this makes clear the extent of the obligation established by the Framework Decision. As is the case with domestic convictions, the courts will be free to determine whether a previous foreign conviction is relevant in the context of current criminal proceedings and, if so, how much weight to attach to it.

The Committee also raises again the issue of subsidiarity. In its letter of 25 July 2006, the Committee asked whether Member States are not currently free to take into account convictions recorded in other Member States now. I confirmed in my last letter that it was the case that certain Member States could not currently...
take into account foreign convictions. There is no rule that prevents them from doing so other than the limitations of their own domestic law. However, there is a precedent in the 1970 Convention on the International Validity of Criminal Judgements between Member States to deal with this issue at European level. We believe that an EU instrument on the subject is an appropriate means of ensuring that all EU Member States are able to take into account the convictions of other Member States on the basis of a consistent approach.

The Committee will also note that 3 new paragraphs have been added to Article 3. These provisions ensure that the application of national rules shall not have any impact on the previous judgements of other Member States. They address situations that could occur in Member States that have systems of accumulated penalties and therefore do not apply in the UK.

Article 3(4) provides an exception to the general obligation to take into account previous foreign convictions where a court would be obliged by national law to modify or subsume a previous foreign conviction when taking a previous conviction into account in the course of new criminal proceedings.

The fifth paragraph applies where a Member State has a system of accumulated penalties which provides for a statutory maximum joint punishment. They ensure that where the sentence for the previous foreign conviction is equal to or more than the maximum joint punishment for the previous and new offences in the Member State of new proceedings, the judge will not be prevented from imposing a sentence in the new proceedings.

7 November 2006

Letter from the Chairman to Joan Ryan MP

Thank you for your letter of 7 November which was considered by Sub-Committee E at its meeting on 29 November. We are grateful for your keeping the Committee informed of developments and in particular for the information given in relation to Article 3. The Committee decided to clear the proposal from scrutiny. In doing so, we are pleased to note that when implementing the Framework Decision the Government will make clear that dual criminality will apply.

30 November 2006

THIRD COMPANY LAW DIRECTIVE AND SIXTH COMPANY LAW DIRECTIVE: REQUIREMENT FOR INDEPENDENT EXPERT ADVICE (7207/07)

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

This proposal was examined by Sub-Committee E at its meeting on 25 April. The proposal should have a helpful deregulatory effect by removing the need for a potentially costly expert’s report on the terms of the merger where all the shareholders agree to dispense with this requirement. The change is, as you say, more likely to benefit companies of other Member States where mergers and divisions are a more commonplace form of company restructuring. We too welcome the Commission’s proposal.

The Committee decided to clear the proposal from scrutiny. We would be grateful to be kept informed of developments.

26 April 2007

TRAFFICKING IN HUMAN ORGANS AND TISSUES (9228/03)

Letter from the Chairman to Vernon Coaker MP, Parliamentary Under Secretary of State, Home Office

Thank you for your letter of 20 July 2006 which was considered by Sub-Committee E at its meeting of 11 October 2006.

In light of the prolonged inactivity on this matter, we have decided to clear the document from scrutiny at this time. We would, of course, expect a fresh EM to be submitted to this House should work on the proposal be revived.

12 October 2006

TREATMENT OF QUESTIONS REFERRED FOR A PRELIMINARY RULING CONCERNING THE AREA OF FREEDOM, SECURITY AND JUSTICE (13272/06, 17013/06)

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

The Court’s Discussion Paper was considered by Sub-Committee E at its meeting on 13 December. The Committee, like the Government, welcomes the debate as to how preliminary rulings and questions concerning the area of freedom, security and justice might be dealt with more speedily and await with interest to see the reactions of the Government and also of governments of other Member States.

As you will be aware, the Committee also holds under scrutiny Doc 11356/06, Commission Communication on the adaptation of the provisions of Title IV TEC relating to the jurisdiction of the Court of Justice. The Court’s Discussion Paper and Communication’s Communication are clearly related and in my letter of 12 October to Joan Ryan MP, Parliamentary Under Secretary of State at the Home Office, the Committee noted that the Government were at a quite preliminary stage in their analysis and assessment of the Commission’s proposal. We invited the Minister to take account of the Court’s Discussion Paper when responding to the Committee. In her reply of 12 December she simply refers to your Explanatory Memorandum. We assume that your officials will be liaising with hers in formulating the Government’s position on these two documents.

We also note that the House of Commons EU Scrutiny Committee has raised two specific questions with the Government: the role of the Advocate General under proposed emergency preliminary ruling procedure; and, the number of cases in which the procedure would be used.

On the face of it the first option presented in the Discussion Paper does not seem attractive as it could give rise to a matter having to be heard twice. We look forward to receiving a fuller assessment from the Government of the proposals from the Court (Doc 13272/06) and to seeing your response to the questions raised by the EU Scrutiny Committee.

The Committee has decided to retain the Discussion Paper under scrutiny.

14 December 2006

Letter from Rt Hon Geoff Hoon MP to the Chairman

Thank you for your letter of 14 December regarding the document 13272/06: Treatment of questions referred for a preliminary ruling concerning the area of freedom, security and justice.

You are right to highlight the linkages between the above document and the provisions for Title IV TEC relating to the jurisdiction of the Court of Justice. I would like to reassure the Committee that FCO officials are liaising closely with colleagues in the Home Office and the Department for Constitutional Affairs to form a detailed and joined-up response to the issues raised in these documents. I attach a paper prepared by Treasury Solicitors in conjunction with other Whitehall Departments which provides the Committee with much of the additional analysis you have requested in relation to the Court of Justice discussion paper. The paper has been submitted to the Council Secretariat.

Whitehall Departments are working on a detailed response to this paper and a supplementary paper from the President of the Court (17013/06), which was translated into English on 8 January 2007 and has now been deposited for scrutiny. I will write to the Committee with an update in early February.

14 January 2007

Letter from the Chairman to Rt Hon Geoff Hoon MP

Thank you for your letter of 14 January and also for your Explanatory Memorandum of 1 February dealing with the Supplementary Note Provided by the European Court of Justice. We are also grateful for your providing a copy of the Note (prepared by the Treasury Solicitor) which the UK has submitted in the negotiation and for providing a clear explanation of the Government’s position.

We are pleased to see that the Government share the Committee’s view, though perhaps for different reasons, that Option I is not to be preferred and we note that it has received little support in the Working Group. We note that Option 2 is being considered and that various ideas are being put forward by Member States in response to the Court’s proposal.
Thank you for setting out the UK’s ideas for improving Option 2. We would be interested to learn what response you have received from the representatives of the Court and from other Member States. We would be pleased if you would keep us informed of the progress of these negotiations.

The Committee decided to retain the proposal under scrutiny.

22 February 2007

Letter from Rt Hon Geoff Hoon MP to the Chairman

Thank you for your letter of 22 February 2007 regarding the Discussion Paper on the treatment of questions referred for a preliminary ruling concerning the area of freedom, security and justice (documents 13272/06 and 17013/06). Following the European Court of Justice Working Group meeting on 19 March I am now in a position to answer the points you raised.

The discussions in the European Court of Justice Working Group have focused on Option 2, with only a small number of Member States supporting Option 1. The Working Group has been working on a formal reply from the Council to the Court of Justice. During these negotiations there was some debate around the appropriate balance between ensuring preliminary rulings were dealt with speedily and the need for Member State involvement in the process. It was agreed that in the reply the Council should make clear an explicit preference for Option 2, but note that some Member States would like to see certain modifications, so long as this did not compromise the objective of securing an effective accelerated procedure.

In order to clarify the circumstances where the expedited procedure would be used Member States agreed to specify that the procedure should be used in the whole area of freedom, security and justice (Title IV TEC and Title VI TEU).

The Presidency will circulate a final copy of the letter to be put to COREPER in April, for adoption as an A point at the Justice and Home Affairs Council on 19 April. A copy is attached (not printed). The European Court of Justice will then bring forward proposals based around Option 2 for consideration by Member States. These proposals will of course be subject to Parliamentary Scrutiny.

29 March 2007

Letter from the Chairman to Rt Hon Geoff Hoon MP

Thank you for your letter of 29 March which was considered by Sub-Committee E at its meeting on 18 April. We are pleased to see that there is a substantial number of Member States in favour of Option 2 and we note that Member States are agreed that any new procedure should be used in the whole area of freedom, security and justice (i.e. Title IV TEC and Title VI TEU). We look forward to seeing the detailed proposals in due course.

The Committee decided to clear the documents from scrutiny.

19 April 2007
Home Affairs (Sub-Committee F)

BORDER SECURITY: RAPID BORDER INTERVENTION TEAMS (RABITS) AND STRENGTHENING SOUTHERN MARITIME BORDERS (11880/06, 11881/06, 16126/06)

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

Sub-Committee F of the House of Lords’ Committee on the European Union examined the proposed Regulation establishing Rapid Border Intervention Teams (RABITs) (11880/06, 11881/06) at a meeting on 18 October 2006. This proposal raises various important issues on which we would like to receive your comments. These issues include the justification of the proposal, the extent of the powers given to guest officers, the accountability mechanism, and the UK’s likely participation in the proposal, as well as its current involvement in FRONTEX joint operations.

JUSTIFICATION OF THE PROPOSAL

The European Borders Agency (FRONTEX) is at the early stages of its operation and an evaluation of the functioning of the Agency and the implementation of its tasks is not due until 2007. With its operations not yet evaluated, it would appear premature to call for an amendment of the existing framework. Indeed, this appears to be your position too. In your Explanatory Memorandum to the Commission’s Communication on policy priorities in the fight against illegal immigration (document 11881/06) you state, with regard to the proposal to establish RABITs, that “FRONTEX should be given time to develop its operational role before consideration is given to broadening its remit”. We support this argument and would be interested to hear whether other Member States share your views that any talk of extending the Border Agency’s remit is premature.

Moreover, we are not persuaded by the Commission’s argument that the current framework is inadequate to address the situations of particular migratory pressure faced by Member States. Why for instance should the Joint Support Teams, which pool officers of Member States’ national border guards for the purpose of participation in joint operations organised by the Agency, not be adequate for crisis situations?

EXTENT OF BORDER GUARDS’ POWERS

We are particularly concerned by the provisions in the proposal on the exercise of executive powers by guest border officers in all FRONTEX joint operations, not just those involving RABITs. The Regulation would grant guest border officers very substantial powers, effectively equating them with border guards of the host State. They would be empowered to check travel documents and the identity of persons wishing to cross the border, interview them and refuse entry. They would also be able to “prevent illegal crossings”. These are far-reaching powers and rules on applicable law and jurisdiction and the remedies available to individuals who are wronged by the exercise of these powers should be clearly defined. We would particularly object to powers being given to “prevent illegal crossing” in the absence of an understanding of what “prevention” means in this context and what such power implies.

ACCOUNTABILITY

The draft Regulation strengthens the role of the Executive Director, who decides on requests for deployment of a RABIT. However there has been no corresponding strengthening of the accountability mechanism. While it is provided that his decision is to be notified to the FRONTEX Management Board and reasons of this decision given, the draft Regulation does not contain any detailed provisions on reporting on RABIT operations—presumably the FRONTEX limited framework consisting of the production of an annual report will apply here as well. This is regrettable. Discussions over the extension of the Agency’s remit in the context of the current proposal should include a review of the mechanisms for ensuring proper scrutiny and accountability of both RABITs and other FRONTEX joint operations.
THE UK POSITION

Given the pending challenge to the UK exclusion from the FRONTEX Regulation, we understand that it is not clear yet whether the Government will be allowed to opt into the draft Regulation. Would the Government be interested in doing so? We further note that, regardless of its participation in the Regulation, the provisions on executive powers of guest officers participating in FRONTEX joint operations would also apply to guest officers of the UK when they participate in such operations. We would be grateful for detailed information on the extent of the UK’s participation in FRONTEX joint operations to date and the assessment it has made of them so far.

The Committee has decided to keep document 11880/1/06 under scrutiny pending receipt of further information. Document 11880/06 has been superseded and will be cleared.

18 October 2006

Letter from the Chairman to Joan Ryan MP

Sub-Committee F of the House of Lords Committee on the European Union examined this communication (16126/06) at a meeting on 31 January 2007.

The Committee welcomes the attention given to this area. We note that the Commission has put forward a heavy agenda of measures. They appear to us to push the development of an integrated management of the EU external borders perhaps even beyond what should remain within the responsibilities of Member States. We will examine carefully the specific proposals as and when they emerge. We find it somewhat frustrating, however, that a document dealing with a matter of such importance should not include more quantitative data that would allow for a meaningful assessment of the dimension of the challenge and the issues at stake.

We understand that there are many difficulties with EU operations to manage the Union’s southern maritime borders which have yet to be resolved. Those of a legal nature seem to evolve around the lack of clarity of the applicable rules for operations that take place outside the jurisdiction of Member States, and which involve staff seconded by Member States to act as border guards. Given the drive to extend these surveillance and interception operations at the external borders, would it not be desirable that they take place on the basis of clear rules regarding the applicable law and jurisdiction?

With regard particularly to FRONTEX, you write that the Government “believes that it has done well in its first year of operation”. We would be interested to know what the basis for this assessment is, given that an evaluation of operations and other activities carried out by the EU Border Agency has yet to be carried out. You further inform the Committee that the Government has contributed to FRONTEX both financially and through staff secondments and participation in operations. Could you tell us what the number of UK staff recruited to FRONTEX is and what the UK’s participation in FRONTEX operations so far has consisted of? Also, what were the practical outcomes of such operations?

We wrote to you on 18 October 2006 in relation to the proposal for the establishment of Rapid Intervention Border Teams (document 11880/1/06) asking, amongst other things, for information on the UK’s involvement in FRONTEX operations. We have yet to receive a reply to that letter. I would be grateful if you could promptly address the issues we have raised both in this letter and the earlier one. In the meantime we will keep this document under scrutiny.

2 February 2007

Letter from Joan Ryan MP to the Chairman

Thank you very much for your letter of 2 February. I am glad to hear that the Committee welcomes this Communication. It is clear from last summer’s events that coordinated activity is needed to address illegal migration to the EU’s southern maritime border.

Regarding the first of your specific points, I entirely agree that operations outside the jurisdiction of Member States but which involve staff seconded by Member States should take place on the basis of clear rules regarding the applicable law and jurisdiction. I await the European Commission’s study on the International Law of the Sea with interest, and hope it can clarify this issue.

You also asked me to elaborate on the comment I made in the Explanatory Memorandum on this Communication that I thought the European Border Agency, Frontex, had done well in the first year of its operation. I completely agree that Frontex activities must be properly evaluated. As you are no doubt aware, Frontex will be formally evaluated later this year. My judgment was simply an informal perception based on UK participation in Frontex operations and experience of Frontex’s Management Board Meetings. Frontex is a very new organisation, and still quite small for the amount of expectation it must bear. It ran a number
of operations in its first year, as well as building up its intelligence capacity and conducting a range of training courses for Member States’ border officers. The operations are internally evaluated and the results fed back into planning processes. Frontex’s annual report, likely to be issued in March, will provide a further source of evaluation.

You also asked for details of Frontex activities that the UK has participated in. Please find this attached. Regarding outcomes, which you also asked about, UK involvement in Frontex operations gained us much useful intelligence on patterns of illegal migration in other parts of Europe. UK staff have been able to assist colleagues working at the EU’s external borders to establish nationality and identity of illegal migrants by drawing on their own experience. Our seconded national experts have been able to share their knowledge of migration risk analysis and expertise in the control of air borders and have been able to advance proposals for Frontex operations. UK-based staff have made a particular contribution to the delivery of a common training programme for border guards, providing much of the material on forgery detection and ensuring that the modules are presented and delivered in English, which is the common language of Frontex and of European border guards.

Finally, please accept my apologies for not having replied to your letter of 18 October. The proposal establishing Rapid Border Intervention Teams is very complex. It is being considerably revised during its passage through the Brussels working group process and we are still considering the implications for the UK. I hope to send you a response to that letter very soon.

22 February 2007

Annex A

UK PARTICIPATION IN FRONTEX OPERATIONS

The UK role in Frontex operations has so far consisted of:

— **Operation Torino February 2006**: a Frontex Air Borders Unit operation to address additional threats to external border security as a result of the Winter Olympics. An Italian immigration inspector was based at Heathrow from 07–27 February 2006 and provided daily returns to Frontex on third country nationals crossing the external border in order to attend the Olympics as spectators or as members of the Olympic family.

— **Medsea and Bortec support groups May–July 2006**: IND has provided a Maritime Security expert to assist these groups in the development of a maritime surveillance network in the Mediterranean.

— **Operation FIFA June 2006**: targeted on those arriving for the World Cup in Germany. A similar operation to Torino. The UK was not one of the European focal airports network but took part in the exchanges of information and weekly assessments.

— **Operation Poseidon June–July 2006**: hosted by Greece, concentrating on irregular migration through the ports of Patras and Igoumenitsa. The UK provided debriefing and maritime intelligence experts.

— **Operations Agios and Gate of Africa July–September 2006**: hosted by Spain and concentrating on document examination at Spanish seaports (Tarifa, Algeciras, Almeria and Alicante). The UK provided two immigration intelligence experts.

— **Operation Hera 1 August 2006**: the initial Frontex reaction to Spain’s request for help in the Canaries. UK provided two experts in detection of falsified documents.

— **Operation Support to Malta September 2006**: UK provided a Chief Immigration Officer for one month to assist in establishing nationality and identity. October 2006: UK provided a senior officer for three days to provide strategic guidance on the subject of documentation for return.

— **Planning expert October 2006**: UK has provided a planning expert from the Ministry of Defence to discuss effects-based planning with senior Frontex officials.

— **Operation Amazon November 2006**: UK provided an intelligence officer to the Frontex co-ordination centre in Warsaw. The operation focused on document abuse by South American nationals arriving in eight European airports.

— **Operation Agelaus February 2007**: The UK is participating in an information gathering exercise regarding unaccompanied minors arriving in EU airports.
The UK has also participated in several Frontex training activities:

- Common Core Curriculum—development of training packages for border guards in a variety of areas.
- Frontex Risk Analysis Network—developing risk analysis and intelligence.
- Returns—developing best practice on returns.
- Partnership Academies—Partnership academies are formed between Frontex and Member states to aid training for EU border guards. The UK has agreed that UK border control officials based in Dover will act as a Partnership Academy focusing on training in detection technology.

The UK also has two seconded national experts in Frontex, one based in the air borders section and one as a special advisor to the Executive Director.

Letter from the Chairman to Joan Ryan MP

Thank you for your letter of 22 February which Sub-Committee F of the House of Lords Select Committee on the European Union has examined at a meeting on 28 March 2007.

We are grateful to you for giving us an idea of the extent and the nature of Frontex operations and the UK’s involvement in them in the list you have provided. The list, however, does not include any figures and specific information which would allow us to make even a basic assessment of the impact of these operations. We are not told, for instance, how many false documents were detected as a result of these operations. How many migrants were intercepted at sea? What were their nationalities? Where were they returned to? How many of those intercepted were asylum seekers? It might be that this information is contained in the Frontex Annual Report which is to be issued shortly. If this is the case, we would expect the Report to be deposited for scrutiny. Could you confirm this or provide us otherwise with the figures and detailed information concerning the operations so far carried out?

With regard to the proposal for the establishment of Rapid Border Intervention Teams (RABITs), it is regrettable that the Government has not only failed to respond to my letter of 18 October, but to send an EM for a revised draft of the proposal deposited in November (document 15745/06) and an EM for another revised draft deposited in February 2007 (document 6613/07). Whatever the reason for the delay to the EMs, we find it incomprehensible not to have received a reply to a letter written over five months ago. The handling of this dossier is deplorable, particularly since you are well aware that it is a priority dossier for the German Presidency and likely to be agreed at the Justice and Home Affairs Council on 19/20 April. We are very disappointed that these delays have undermined scrutiny of a proposal of great significance and one which, although the UK is not party to it, the Government is very keen to support. If, as it seems, the proposal will be agreed at the April JHA Council, there will be no time to clear the original document from scrutiny, nor indeed will there be time for meaningful scrutiny of the revised drafts.

We will retain this document under scrutiny pending receipt of further information.

28 March 2007

Letter from Joan Ryan MP to the Chairman

Thank you for your letter of 28 March regarding the above dossiers. I apologise for taking so long to reply to your first letter of 18 October and for the delay in depositing an Explanatory Memorandum (EM) on the revised RABITs Regulation drafts. I very much regret the delays in handling of this dossier which have led to reducing the time available for scrutiny. There are a number of reasons for this, the main ones being the complex and changing nature of the text and the UK’s complex legal relationship to this proposal—where a Regulation in part amends another Regulation from which we are excluded but participate operationally. The text altered six times in a six week period. This meant that even as one draft was completed and the corresponding EM was being prepared, the proposal was swiftly and substantially revised, and a new draft published. This, in turn, required careful reconsideration of the new draft, its implications and the UK position, and revision to the EM.

I am aware of the priority the German Presidency is giving to this dossier. The Presidency have advised that the draft RABITs Regulation will be voted on at the LIBE committee on 10–11 April, put to COREPER on 17–18 April, a general approach sought at the JHA Council 19–20 April plus a state of play report, to the EP for adoption on 25 April and then to the 21–22 June Council for adoption.

We remain supportive of RABITS and UK participation therein. However, rather than risk delay in adoption through efforts to seek any necessary complex textual amendments to clarify UK participation, the UK has proposed, with Presidency support, a Council Declaration. This repeats the UK’s support for Frontex and its
willingness to participate in Frontex activities and invites the Agency and its Management Board to explore ways in which the UK can likewise practically support the operations of RABITs. This will involve further detailed consideration of the most appropriate process and legal framework for UK involvement. We consider it prudent to wait for the preliminary ruling of the Frontex ECJ case before commencing this process. I attach a text of the proposed Council Declaration to this letter.

In addition to depositing an Explanatory Memorandum on the latest draft of the Regulation today I also address the specific concerns raised in your letter of 18 October in turn below.

Firstly, you ask about the wisdom of expanding the remit of Frontex at this early stage in its development and other Member States’ views. It has become apparent in the first year of Frontex operations that individual Member States may lack the means to be able to react swiftly to unexpected irregular migrant pressures at the external border. This draft regulation is a response to those clearly expressed needs but does not expand Frontex’s responsibilities, which remain focussed on planning and coordination of operations, risk assessment and training. Other Member States clearly support the RABITs concept.

You ask why RABITs are needed at all, and you suggest that Frontex Joint Support Teams are adequate for crises. The key difference is the speed at which an intervention team will be deployed and the enhanced training which its officers will receive over the course of the next year. The current draft of the proposal says that Frontex has five days in which to consider a request for an intervention team. An operational plan must then be drawn up immediately if a RABIT is to be deployed, and deployment then must take place within five days of the operational plan being agreed. In our view the potential for the intervention teams to support operations rapidly at the EU’s borders is important.

I fully support your view that the applicable law and jurisdiction should be clear in the text. The proposed Regulation provides that guest officers will be acting under the command of the Member State hosting the operation, and according to the operational plan drawn up by Frontex and the host state. Criminal and civil liabilities are also set out clearly in the draft. It will be important for both the officers’ home states and for Frontex to ensure that participating officers understand their duties and responsibilities under these provisions.

You have objected to the lack of clarity in the provision for powers being given to “prevent illegal crossing”. This is language drawn from the Schengen Borders Code and refers to the need for patrolling and surveillance of the external border in order to prevent unauthorised crossing. The latest draft of the proposal is clearer as it refers specifically to the Schengen Borders Code.

You also raise the question of scrutiny and accountability of Frontex operations. Frontex is accountable for its activities through the Executive Director to the Frontex Management Board, the European Commission and the European Parliament. Articles 3.3 and 20(2)(b) of the Frontex Regulation (2007/2004) set out its evaluation and reporting procedures, which include its Annual Report. Additionally, individual operational plans make specific provision for evaluation which is considered within the Agency to inform further action and the external reports.

Finally, you also ask about opting in. Due to the UK’s exclusion from the Frontex regulation we are not able to opt into this proposal. However, we will explore with the Agency and the Management Board ways in which the UK can practically support these additional Frontex activities when it is in our overall interests to do so on a case by case basis. This is a continuation of our current position regarding Frontex operations.

If the UK is successful in the case before the ECJ, and opts in to the Frontex and the RABITs Regulations, we would be fully bound by both. We anticipate it is highly unlikely that the UK would ever want to request a RABIT or a joint operation on UK territory in response to an influx of immigrants from the UK to the Schengen area. However, we will develop a mechanism with you for consulting Parliament beforehand, in the unlikely event that the UK needs to make a request. We will consider any opt in position as and when we have the results of the ECJ case but are keen to strengthen Frontex and see it develop in the future.

As requested, you have already received a list of UK participation to date in Frontex activities with the response to your letter of 2 February. Our assessment is that Frontex has done well to coordinate approximately 23 joint operations and pilot project in its first year. It is perhaps to be expected that there remains scope for improvement in the planning, coordination and evaluation of the work carried out. The need for engagement with third countries of origin or transit has been highlighted by last year’s migration across the Mediterranean and into the Canary Islands.

In your most recent letter you have asked for additional figures and information which would allow you to make a more thorough assessment of the impact of Frontex operations. Achieving the balance between maintaining confidentiality as an Agency charged with enforcement matters, and, precisely because it is a European institution, needing to show transparency and accountability, is not unique to Frontex—Europol faces the same issues. The Frontex Report 2006 to be placed before the European Parliament on 15 June is
expected to contain some more detailed information as do operational reports on their website.\footnote{1} We continue to engage with Frontex on the importance of full evaluation of operations. The UK is taking part in a four day workshop on 16 April where these issues will be looked at in much more detail with specific attention on certain operations on the external border. Officials will push for more information to be included to enable effective evaluation. I will deposit the Annual report for scrutiny as soon as it is published and provide an update on the outcome of the evaluation workshop.

As stated in my previous letter, through our cooperation with Frontex we have gained much useful intelligence on the routes and methods used by irregular migrants and those who profit from them, and we have contributed to expanding Frontex’s capacity. It is much harder to put a figure on the numbers of irregular migrants who have been prevented from reaching the UK border as a direct result of Frontex operations as those who are turned back at the external border will not necessarily have intended onward travel to the UK but we take the view that strengthening security at the external EU border is firmly in the UK interest.

5 April 2007

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**Annex A**

**SUBJECT**


The Council welcomes the full support the United Kingdom is giving to the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union and its development, as well as its willingness to participate in its activities pursuant to Regulation (EC) 2007/2004. It invites the Agency and its Management Board to explore ways in which the United Kingdom can likewise practically support the operations of Rapid Border Intervention Teams.

**Letter from Joan Ryan MP to the Chairman**

I am writing to update you on progress on negotiating this Regulation and to encourage you to consider this document as soon as possible as the German Presidency have again moved the timetable for adoption forward. The European Parliament’s Committee on Civil Liberties, Justice and Home Affairs approved the RABITs Regulation text on 11 April as set out in document 8325/07 which has already been sent on to you. The proposal was then discussed at the JHA Council on 20 April with the Presidency urging rapid adoption in light of the expected summer pressures and with the outcome that a general approach was agreed on the current text. The Commission suggested that formal approval could be taken before the June JHA council so that RABITs could be up and running as soon as possible. On 25 April the European Parliament plenary also approved the Regulation so we now expect the Presidency to put the Regulation forward as an “A” point to a Council before June. As soon as we know when this will be, we will let you know.

I also want to clarify two points. Firstly, that Member States have agreed the text of the Council Declaration that the UK has proposed in support of Frontex and RABITs. This will be annexed to the protocols of the Regulation when it is adopted at Council. Secondly, that we will consider our opt in position on Frontex and RABITs when we have the results of the ECJ case. I will keep you informed of the outcome of our Frontex ECJ challenge.

30 April 2007

**CIVIL PROTECTION MECHANISM (8430/05, 8436/05)**

**Letter from Ed Miliband MP, Minister for the Third Sector, Cabinet Office to the Chairman**

I am writing in response to your letter of 19 July 2006\footnote{2} regarding the Explanatory Memoranda on Civil Protection Proposals submitted on 29 June 2005 and 14 June 2006:

(a) Document 8430/05 COM(05) 137 Commission Communication: Improving the Community Civil Protection Mechanism issued on 26 April 2005;

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1  www.frontex.europa.eu
(b) Document 8436/05 COM(05) 113: Council Regulation establishing a rapid response and preparedness instrument for major emergencies issued on 26 April 2005; and


As I noted in my letter of 12 July 2006, the Finnish Presidency intends to give priority to early agreement of the Council Regulation, as the existing Regulation expires on 31 December. As such, the Regulation now features on the agenda of 5–6 October Justice and Home Affairs (JHA) Council. We understand from the Finns that they are seeking political resolution of the difficult questions concerning Community finance, but that they do not intend to seek agreement to the entire Regulation. They hope this will follow in December, probably in tandem with the Civil Protection Mechanism Decision.

LEGAL BASE

The Commons European Scrutiny Committee continues to have concerns about the use of Article 308 of the EC Treaty as the legal base for the Regulation and Decision. The Commons Committee believes that, for actions outside the Community (other than in Bulgaria, Romania, Iceland, Liechtenstein and Norway), the proposals do not meet one of the tests for the use of Article 308, namely that it is necessary for the operation of the common market. The Commons Committee therefore asks for the Government’s view on whether references to third countries (other than those listed above) should be removed from the proposals or whether the UK should abstain or vote against the proposals.

As I noted in my previous letter, the Government accepts that it is more difficult to satisfy the operation of the common market test in the case of third countries. However the Government, as in 2001 when the Committee raised similar concerns over its use, believes that, for the reasons outlined below, the use of Article 308 is acceptable in this case:

(a) as Jack Straw set out in his letter to Jimmy Hood of 2 March 2004, the Government believes that it is not necessary that every proposal under Article 308 should relate in a narrow and restrictive sense to the operation of the common market;

(b) civil protection assistance helps to minimise disruption and limit economic damage and therefore has a role in the smooth operation of the common market. This is true for assistance given within the Community, but also for assistance given to third countries, albeit there is room for an alternate view. One such example was the assistance given to the US by the EU in the immediate aftermath of Hurricane Katrina;

(c) the third country aspects in the Decision and Regulation are not prominent, they respect Member State competence and will draw funding from the Stability Instrument, which has Articles 179(1) and 181a as legal bases that do explicitly permit action outside the Community; and

(d) there is no support within the Council for the Committee’s view that Article 308 is an inappropriate legal base and therefore for the suggestion that the proposals should use Article 181a as an additional legal base. Furthermore, there is a clear evidence of a political will in the Council and in the European Parliament that civil protection at the Community level should encompass certain interventions outside the Community.

I am aware that the Committee might not be satisfied with this decision. However, as there is no prospect of amending the proposals in the way the Committee requests, the alternative would be to veto a proposal which has widespread support within the Council and covers such a vital policy area: providing mutual support in the event of a disaster. An abstention would also effectively count as a vote against as decisions are taken by unanimity. The Government, as I previously stated, does intend to ask for a note to be placed in the minutes of the Council reflecting UK concerns.

POLICY

The state of negotiations on the substance of the proposals remains much as they were in my last letter to you, with debate in the Council focussing primarily on the Commission proposals to fund logistics support, to hire equipment and assets and to fund transportation of assistance. The UK, together with a small group of other Member States, has maintained reservations on these areas and has already managed to secure significant amendments from the original proposals. There is, however, strong support from a number of other Member States for the adoption of the proposals as currently drafted. As noted above, the Presidency has added the Regulation to the agenda of the JHA Council on 5–6 October. The UK intends to hold its present position and does not expect a compromise proposal to be agreed at this stage.
I have previously apologised, in my letters to you and to Jimmy Hood of 14 June 2006 (which followed my appointment in May), for the delay in providing the Government’s Explanatory Memorandum on the Mechanism Decision. You ask in your letter of 19 July 2006 for the reasons for this delay. I am afraid that I have to report that this was due to administrative delays within my department. I can only apologise once more and assure you that I will ensure my department does all it can to provide Memoranda promptly in future.

5 October 2006

Letter from Ed Miliband MP to the Chairman

I am writing in following the Commons European Scrutiny Committee’s report of 25 October 2006 regarding the Explanatory Memoranda on Civil Protection Proposals submitted on 29 June 2005 and 14 June 2006:

(a) Document 8430/05 COM(05) 137 Commission Communication: Improving the Community Civil Protection Mechanism issued on 26 April 2005;

(b) Document 8436/05 COM(05) 113: Council Regulation establishing a rapid response and preparedness instrument for major emergencies issued on 26 April 2005; and


Policy

Negotiations on the Regulation are now coming to a head. I have informed you previously that the Council is split on whether Community funding should be available for the transport of civil protection assistance and provision of equipment. This remains the case. In an effort to break the deadlock, the Finnish Presidency now intends to take this matter to the 4–5 December Justice and Home Affairs Council and possibly the 14–15 December European Council. It is unclear at present whether a compromise position will be agreed.

The UK has maintained its opposition to Community finance for civil protection transport and equipment through this Regulation. We have, working together with a small group of other Member States, been successful in significantly narrowing the scope of the Regulation. However, the current compromise is still unacceptable. It is possible that agreement might be reached which allowed Community finance for transport in limited circumstances and, Community finance for equipment under even more tightly restricted criteria, if indeed it was available at all. However, it is also possible that in the absence of an acceptable compromise the UK, together with others or in isolation, might block adoption of the Regulation.

If no agreement is reached on the Regulation, the UK will instead continue to press, as it has done in a recent joint non-paper issued with Germany, the Netherlands, Estonia and Sweden, for a wide-ranging Fundamental Review of the Community’s approach to civil protection to be conducted over the next two years. This would seek to establish a set of common principles and a common understanding of this area in order to break the impasse on this issue. At the same time we would repeat the call made in the non-paper that the draft Financial Instrument be adopted without the difficult articles relating to transport and equipment. This would ensure that funding does not cease at the end of the year.

Legal Base

The Commons European Scrutiny Committee correctly pointed out in its report of 25 October that I made an error when maintaining in my letter of 5 October that abstention on the Regulation would effectively count as a vote against and thus would veto adoption of the Regulation. I apologise for this error. However, the Government has not changed its position, for the reasons set out in my last letter, that while it is more difficult to satisfy the operation of the common market test in the case of third countries, Article 308 is an acceptable legal base for this Regulation. Therefore the Government feels that it would not be appropriate to abstain on this Regulation and, if an acceptable compromise is reached at the December Justice and Home Affairs Council, the Government will vote in favour of the Regulation. As I have already indicated in previous correspondence, the Government will ask for a note to be placed in the minutes of the Council reflecting UK concerns.

27 November 2006
Letter from Joan Ryan MP, Parliamentary Under Secretary of State, Home Office to the Chairman


In June 2004, Eurojust and Europol signed a co-operation agreement governing co-operation in strategic, operational and practical and administrative matters. The Hague Programme (of the same year) stipulated that the two bodies should report annually to the Council on their common experiences and about specific results. This is the first such annual report for 2005 and 2006.

I would like to take this opportunity to highlight the substantial progress made in all fields of co-operation. The Government welcomes the fact that Eurojust and Europol are addressing the barriers to operational co-operation identified in the report and is optimistic that both organisations will continue to work to overcome difficulties arising from differences in organisational structure and legal frameworks.

16 January 2007

Annual Report to the Council

CO-OPERATION BETWEEN EUROJUST AND EUROPOL FOR 2005 AND 2006 POINT 2.3 OF THE HAGUE PROGRAMME

1. BACKGROUND

The co-operation agreement between Eurojust and Europol was signed on 9 June 2004. On the basis of this agreement, co-operation was carried out in the following fields: in strategic matters (2), in operational matters (3) and in practical and administrative matters (4).

2. STRATEGIC CO-OPERATION

The strategic co-operation focused on facilitating the implementation of the areas of co-operation described in the agreement. The main tool of co-operation in strategic matters is the Eurojust-Europol Steering Committee, which was set up to monitor the implementation of the agreement, and to develop strategies and priorities. It is composed of both members of Eurojust and Europol, and holds joint meetings. The Steering Committee met four times in 2005 and three times in 2006. A scoreboard was developed as a means for documenting key tasks and identifying priorities.

Apart from these joint meetings, Eurojust and Europol also attended each other’s respective strategic meetings.

Furthermore, preparations have started in October 2005 for joint Europol-Eurojust participation in the R4eGov project, a three year project on e-government funded by the EU Commission to enhance interoperability between public institutions within the EU.

It is also worth mentioning that Eurojust and Europol jointly organised the first meeting of the national experts on Joint Investigation Teams (JITs), which took place on 22 and 23 November 2005. Another experts meeting was held on 10 November 2006 which resulted in concrete conclusions which were submitted to Council. Furthermore, a project was initiated by Eurojust and Europol to provide a guide on Member States’ legislation regarding the setting up of JITs. This comprehensive guide, which has been presented and distributed during the expert meeting in November 2006, is an excellent example of the well-functioning co-operation between the administrations of both organisations.

3. OPERATIONAL CO-OPERATION

Co-operation in operational matters takes mainly place via the case co-ordination meetings organised by Eurojust, to which Europol is regularly invited. In a number of successful cases, involvement of both parties from the beginning provided a basis for good co-operation. To give a few examples, Europol and Eurojust participated in 2005 in a Dutch-British JIT, resulting in the seizure of heroin and money and the arrests of several suspects. Equally, in 2005, co-operation between Europol and Eurojust resulted in another JIT, involving Germany and the Slovak Republic, initiated by Europol and facilitated by Eurojust. Furthermore
Eurojust had been involved via the French representative to support in ongoing payment card fraud cases currently analysed in a work file operated by Europol.

More regular involvement of Eurojust at an earlier stage would further improve cooperation between the two organisations.

Participation by Eurojust in Europol’s analysis groups is rather limited for two main reasons. First the legal framework of Europol does not allow Eurojust to be associated with the analysis files; however, this will be possible, under certain conditions, after the entry into force of the “Danish Protocol” in early 2007. Second Member States participating in analysis groups are reluctant to use the legally available avenues to associate Eurojust national members systematically with the AWF teams, even though this would facilitate more efficient cooperation. Nevertheless, Eurojust national members were involved in eight of currently 16 analysis files through specific cases.

Eurojust has also contributed to Europol’s Organised Crime Threat Assessment (OCTA) in 2005 and 2006, based on the requirements developed by Europol.

To facilitate the exchange of classified information, Eurojust drafted a table of equivalences between the respective security regimes of Eurojust and Europol. Discussions on this table are complicated by the differences between the two security regimes. However, the technical design and specifications for a secure line between the two organisations to enable the electronic exchange of confidential data were agreed and the work on the project has well progressed.

4. Co-operation in Practical and Administrative Matters

Co-operation in practical and administrative matters was furthered by the designation of contact points within Eurojust and Europol. Eurojust and Europol agreed to recognise each other’s contributions in their respective Annual Reports. On an administrative level, co-operation between the legal services has been excellent, as evidenced by a common position on JITs and the JIT network presented to the MDG.

Both Europol and Eurojust hold the view that their respective headquarters should be in proximity in the near future.

5. Conclusion

Given that the co-operation agreement between Eurojust and Europol was signed in June 2004, and given the complexities arising from differences in organisational structures and legal frameworks, substantial progress has been made in the fields of strategic, operational, practical and administrative co-operation.

Constraints on operational co-operation arise from Europol’s strict legal framework and the lack of awareness of Member States that they have to take pro-active steps to facilitate Eurojust’s involvement in analysis files. Co-operation could be improved by promoting better awareness of Europol and Eurojust’s respective legal frameworks, exchange of information at an earlier stage, a more systematic involvement of Eurojust in analysis files and a rapid adoption of the table of equivalence between the respective security regimes.

CRITICAL INFRASTRUCTURE PROTECTION (16932/06, 16933/06)

Letter from the Chairman to Tony McNulty MP, Minister of State, Home Office

Sub-Committee F (Home Affairs) of the European Union Select Committee considered these documents at a meeting on 14 March. They were grateful for your full and informative Explanatory Memoranda.

The importance of protecting critical infrastructures against terrorism and natural disasters is not in doubt; nor is the importance of cooperation between States where destruction or disruption of the infrastructures would affect a number of States. Nevertheless the Committee has consistently doubted whether a formal initiative at EU level is the best way of handling this, and has in the past urged caution on the Government in its approach to this European Programme. This continues to be our view. We believe that the Government shares many of these doubts, and we hope that ministers and officials will continue to voice them in the course of negotiations on the draft Directive.

The Committee has in the past had doubts on subsidiarity grounds, and has wondered what this Programme can achieve which could not as well (or better) be achieved by Members States cooperating as and when required in the case of particular critical infrastructures. We do not however believe that this argument is best pursued by debate as to whether the requirements of Article 5 of the EC Treaty are satisfied, and prefer to argue on the merits of the proposal.
We agree that the definition of European Critical Infrastructures is too wide, and that, if unamended, it would result in too many critical infrastructures being designated as ECIs. There would be a consequent dilution of the protection which should be concentrated on the most important and most vulnerable infrastructures; and there would be an accompanying increase in cost.

We queried two years ago the added value that a European Critical Infrastructure Warning Information Network would bring. At the time the Government too was not persuaded of the need for such an additional warning network, and did not support it. Other Member States seemed to take the same view. Nevertheless the Communication makes it plain that the Commission intends to proceed with this. We urge ministers to continue to argue against this.

We also share the Government’s doubts about the need for legislation requiring owners and operators of ECI to establish an Operator Security Plan and to designate Security Liaison Officers. We agree that these are matters which can be dealt with less formally, and we hope the Government will continue to argue against Articles 5 and 6 of the draft Directive.

We intend to keep these documents under scrutiny, and would like to be kept informed of the progress of negotiations.

19 March 2007

DATA PROTECTION FRAMEWORK DECISION (13246/2/06)

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

Sub-Committee F (Home Affairs) of the House of Lords Select Committee on the European Union considered the revised proposals for a Data Protection Framework Decision (DPFD) at a meeting on 13 December 2006. Over the past year there has been copious correspondence between us on this instrument, and indeed this proposal was touched upon in your evidence to the Sub-Committee’s inquiries into both the Heiligendamm meeting and the Schengen Information System. However, none of this prepared us for the significance of the changes since the original proposal was deposited for scrutiny last year, most of which have gone in the direction of diminishing safeguards for individuals. You will be aware of the Second Opinion issued on 29 November 2006 by the European Data Protection Supervisor. We believe his concerns should be taken seriously within the Council, and should inform further negotiations over this instrument.

We are particularly concerned by those provisions in the revised draft which appear to have fallen below the standards of the Council of Europe Convention on the processing of personal data, which is binding upon Member States and provides a base-line protection for individuals with regard to the exchange and processing of personal data. These are:

— the open-ended and discretionary conditions which permit the processing of data for purposes other than those for which the original processing took place, contrary to basic principles of purpose limitation (Article 5);

— the provision allowing as a general rule, though subject to conditions, the processing of special categories of data (race, ethnic origin etc), rather than prohibiting it with narrowly defined exceptions (Article 6);

— the lack of common standards and coordinated decisions on the adequacy of data protection provisions in third states, which will enable third countries’ authorities to obtain information from the Member State with the lowerst legal requirements for transfers, and so harm the trust between Member States themselves (ex Article 16); and

— the right of information being dependent on a request by the data subject, effectively emasculating this right (Article 19).

We would be grateful for your views on these points, and would be glad to know how the Government intends to take these issues forward in the negotiations.

It is also not clear to us why you continue to question the legal base for the applicability of the DPFD to domestic processing. The Council Legal Service issued an Opinion on the matter in March 2006. Could you confirm that the Council Legal Service has cleared the legal base question? How does the view of your Department differ from that of the Council Legal Service?

We agree with the EDPS that the DPFD should include specific safeguards with regard to biometric data and DNA profiles. If the DPFD is to be an instrument underpinning the third pillar data protection regime, as you have told the Committee when giving evidence, it would be appropriate for specific safeguards to be
included for these categories of data, the use of which is becoming increasingly important in the area of law enforcement. This question is particularly pertinent at a time when the German Presidency is planning to incorporate the Prüm Treaty, which focuses on biometric information and DNA profiles, into the EU framework. Could you let us know whether any thought has been given to including in the DPFD specific standards with respect to the processing of biometrics and DNA profiles? We understand that this might be difficult to achieve within the time frame that has been set for agreeing this proposal. We believe, however, that a timely agreement should not result in either weak data protection standards or in an ineffectual third pillar data protection regime.

The Committee has decided to keep this document under scrutiny pending receipt of the information requested and further progress reports on negotiations. The previous draft (document 13019/05 and Add 1) has been superseded and is cleared.

14 December 2006

Letter from Rt Hon Baroness Ashton of Upholland to the Chairman

Thank you for your letter of 14 December 2006 in which you raise a number of points regarding the most recent draft of the Data Protection Framework Decision (DPFD). While I have addressed each of these, it might be helpful to note that we are waiting for the Presidency to circulate a new text and expect this document to differ considerably from the current version. We hope to receive this new text in early March.

In your letter you raise concerns that a number of provisions in the DPFD appear to have fallen below the standards of the Council of Europe Convention on the processing of personal data (also known as Convention 108). The UK’s position has always been to ensure an appropriate standard of data protection in the third pillar and we regard Convention 108 as a useful starting point on which to build. You have helpfully noted in your letter the specific data protection provisions where you believe the standard of the data protection in the DPFD has fallen below that of Convention 108 and I have addressed each of these below.

The first concern you raise is about processing contrary to the basic principle of purpose limitation. Article 5 of Convention 108 states that data shall be “processed fairly and lawfully . . . [and] stored for specified and legitimate purposes and not used in a way incompatible with those purposes.” It does not prohibit the use of data for purposes other than those for which it was originally collected. Article 5(3) of the latest draft of the DPFD similarly permits the further processing of data “if it is necessary for lawful purposes of public interest not incompatible with” the original purposes of prevention, detection, investigation or prosecution of criminal offences. The DPFD does not, therefore, set out “open-ended” conditions on data processing because all processing must be lawful and, like Convention 108, “not incompatible” with the original purpose.

The inclusion of the term “not incompatible” may appear to permit a wide range of processing. However, as noted above, the term is taken from Convention 108 (it is also used in the Data Protection Directive). It is necessary to permit data processing as part of the non-criminal functions of the police and for civil and regulatory procedures. For example, the police have a statutory duty to provide support for victims of crime, and in particular, for victims of serious and violent crime, under the Criminal Justice Act 2003. Victims may be informed by the police when their attacker is about to be released, if an appeal has been turned down, whether they will be re-housed in an area close to the victim and so on. Processing of the offender’s data in this way is often simply to support the psychological and emotional welfare of the victim and is not for the purpose of crime prevention, investigation, detection or prosecution. We would not wish UK police to be prevented from processing data for purposes of victim support and so we welcomed the permission to process data for other lawful purposes not incompatible with crime prevention to ensure that the police can continue to fulfil this important statutory function.

Permission to process data for purposes “not incompatible” with the original crime prevention function is also necessary for the conduct of civil and regulatory business. It is often unclear at the start of an investigation whether certain actions amount to a criminal offence or a regulatory breach. Regulatory bodies therefore need to be able to further process data originally used in a criminal context to pursue a regulatory breach if that transpires to be the most appropriate course of action. It would not be possible for organisations such as the Financial Services Authority or the Serious Fraud Office, for example, to carry out their lawful functions if all data originally processed for a criminal purpose could then not be processed for civil or regulatory purposes. In addition, these bodies all have duties under the Public Records Act to preserve certain material for posterity and to send it to the National Archives. This function is far removed from crime prevention, but is lawful and “not incompatible” with the original policing function.

Another concern you raise relates to the processing of sensitive data. As you point out, Convention 108 does not permit the processing of sensitive data unless domestic law provides appropriate safeguards. These safeguards can be found in domestic law in the UK’s Data Protection Act 1998 (particularly in the 1st data
protection principle which requires a Schedule 3 condition be met to process sensitive personal data) and in other legislation, like the Rehabilitation of Offenders Act. The DPFD would permit the processing of sensitive data only when “strictly necessary” and states that Member States must provide for suitable additional safeguards. Further, the DPFD also prohibits the selection of groups solely on the basis of sensitive personal data. It is the Government’s view that the provisions in the DPFD will ensure an appropriate level of control over the processing of this data and that those controls will provide a level of protection consistent with the DPA and Convention 108.

You also noted concerns about a lack of common standards and co-ordinated decision-making on the adequacy of data protection provisions in third countries if article 16 is removed from the text. This issue is still being discussed at Working Group level and no final view has yet been taken in this area. The UK, along with most Member States, opposed the establishment of the comitology committee operating under Qualified Majority Voting rules because such a committee and voting system is not appropriate in the third pillar. It is important to bear in mind that some sharing of data with countries with inadequate data protection is necessary, for example in relation to extradition, deportation or to aid criminal investigations (for example, the overseas murder investigation of a UK national). In practice, data is shared safely with countries that have inadequate data protection by several means, including sharing with a trusted recipient or subject to specific conditions.

You have also noted concerns about the right to information about data processing being dependent on a request by the data subject. The original notification right (ie to be told that a body is processing one’s data for police purposes) was subject to exemptions that would result in the data controller often being exempt from this duty. It did not apply if the data subject already had this information or where notification would prejudice crime prevention. The narrower version of this right (to receive this information only on request) is consistent with the comparable right in Article 8 of Convention 108. You might like to note that the provisions in the DPFD which grant a subject access rights are also consistent with those in Convention 108 and with those in domestic law, in Section 7 of the Data Protection Act.

In your letter you seek further information regarding the UK position on the legal base for the applicability of the DPFD to domestic processing. The Government remains unconvinced that a suitable legal base exists for this instrument to apply to purely domestic business. However, we are prepared to make a political undertaking that we would apply comparable principles to domestic data processing.

You asked whether thought had been given to including specific safeguards in the DPFD on the processing of biometric data including DNA and I can confirm that no specific discussions have taken place on biometric data during Working Group negotiations. It might be helpful to note that biometric data is of course another form of personal data. Some biometric data, for example, certain photographs and DNA would also be considered to be sensitive data if it were possible to derive information regarding the racial or ethnic origin or health of the data subject. All biometric data will therefore be subject to the provisions of the DPFD and some biometric data will be subject to the additional provisions on sensitive personal data. As you know, the DPFD aims to set a minimum standard across the whole of the third pillar, and where appropriate, we would expect certain databases to have bespoke data protection rules, including specific rules on biometric data, as found in the Council Decision on the Establishment, Operation and Use of the Second Generation Schengen Information System.

As ever, I am grateful for the interest your Committee has shown in this important dossier. I hope I have supplied the information you were seeking, but please do not hesitate to contact me should any further details be helpful.

16 February 2007

EUROPOL: ESTABLISHING THE EUROPEAN POLICE OFFICE (5055/07)

Letter from the Chairman to Tony McNulty MP, Minister of State, Home Office

Sub-Committee F (Home Affairs) of the House of Lords Select Committee on the European Union examined this proposal at a meeting on 21 February 2007.

The Committee notes that the current debate on the future of Europol is largely based on the assumption that the cumbersome legal framework is preventing it fulfilling its potential. The fact that Protocols signed in 2000, 2002 and 2003 will only come into force in the next two months is evidence of this. The establishment of Europol as an Agency of the EU is certainly a welcome move, and will allow Europol to adapt more easily to changes in the security environment.
However, it is not clear to us why a change in the legal framework of Europol has to be accompanied by a further expansion of its mandate and powers. The changes proposed are significant, in that they have the potential to transform an entity set up to assist Member States’ investigations by providing high quality analysis of criminal intelligence into an investigative and operational agency. The new legal framework also has the consequence that Europol could develop a major operational role simply as a result of a succession of relatively small changes to its remit. This makes it all the more important that changes in Europol’s mandate and powers are accompanied by enhanced controls.

We examined previous proposals to extend the mandate of Europol to criminal conduct which is not strictly related to organised crime, and we had reservations about this. The Government shared our view this time (see Europol’s role in fighting crime, 5th Report of session 2002–03, paragraphs 9–10). You appear still to be unconvinced that the extension of Europol’s remit to crime which is serious but not organised would be justified. We would be interested to know why such an expansion of Europol’s remit is being proposed again, and how much support there is from the other Member States for this.

The proposal defines serious crime by reference to the same list of offences which obviate the requirement of dual criminality as a condition for executing a European Arrest Warrant. The lack of an EU-wide definition of offences such as “swindling”, “sabotage”, and “racism and xenophobia” is likely to cause difficulties in defining clearly the area of competence of Europol. Since the United Kingdom has not opted in to the jurisdiction of the Court of Justice under Article 35 of the EU Treaty, it seems to us that a United Kingdom court would be unable to resolve any problems in the interpretation of these expressions by referring the question to the Court of Justice for a preliminary ruling. We would be grateful for your views on this.

We believe that any proposal to increase Europol’s investigatory and operational powers should be accompanied by safeguards to ensure accountability in relation to these new powers. At the moment the role of the European Parliament is limited, and most national parliaments do not play any direct role in the work of Europol. The draft Decision fails to provide any real enhancement of the European Parliament’s oversight of Europol, since the provision enabling the Director and the Presidency of the Council to report to the European Parliament simply mirrors a provision of the same effect in the 2003 Protocol.

We note that proposals for a joint EP-national parliament mechanism to follow Europol’s activities were considered in the Friends of the Presidency “Options Paper”, and we are aware that the national parliaments are also to be involved in scrutiny of Europol under the terms of the Constitutional Treaty. There is no mention in the draft Decision of national parliaments despite their loss of power to control, through the ratification process, the development of Europol.

Various national parliaments are pressing for the idea of a joint committee of members of national parliaments and the European Parliament, and we did likewise in our report on Europol’s role in fighting crime (paragraph 69). When that report was debated on 3 June 2003 Lord Bassam of Brighton, replying for the Government, agreed that national parliamentary scrutiny of Europol was important; in relation to data protection he thought national parliaments had a “key role”. Is this still the Home Office view? Will the Government be arguing for the insertion in the Decision of provisions to this effect?

Finally, we note that the Commons European Scrutiny Committee have questioned the legality of Article 50 of the draft Decision, which would extend to the Director and staff of Europol the Protocol on the Privileges and Immunities of the European Communities. The Council Legal Service were asked to provide an opinion on this for a special session of the Europol Working Party on 14 February. We would be interested to know whether the Legal Service considered this question, and what the outcome was of that meeting.

The Committee has decided to keep the document under scrutiny pending receipt of the information requested. We would also be glad to have regular reports on the progress of negotiations.

22 February 2007

Letter from Tony McNulty MP to the Chairman

Thank you for your letter dated 22 February, which unfortunately was only received in the Home Office on 29 March.

The Europol Working Group, which is discussing the draft Council Decision article by article, has now met five times this year. Progress on the discussions has been quite slow and to date the Working Group has discussed Chapter One twice and the next four chapters, covering Articles 10–34 (of 62 articles) just once. Following the Working Group meeting on 3–4 April we expect the Presidency to issue what it hopes will be the final draft of Chapter One in the next few weeks, and I will send it to you when we receive it.
**Progress Update**

There have been a number of revisions to Chapter One. Member States have sought to limit to some extent Europol’s involvement in serious crime that is not linked to organised crime. And other changes have reduced the opportunity for Europol to take the initiative in operational matters, or to lead Joint Investigation Teams.

There has been considerable discussion on the proposed application of the EC Staff Regulations and Community Funding. The opinion of the Council Legal Service, makes it clear that the EC Staff Regulation must be applied in its entirety to an EU Agency that operates under Community Funding. It follows therefore that Europol could not change its source of funding from Member State contributions to Community Funding if Member States could not agree to the provisions of the EC Staff Regulations.

There are still differences of opinion between the Commission legal officers and Council Legal Service about the application of privileges and immunities to Europol members of Joint Investigation Teams, and some concern about Europol’s ability to continue to recruit specialist staff (the so-called bold posts). It has also been impossible to get the sides to agree on the cost implications of introducing the EC Staff Regulations, since different calculation methods were used. That said we are persuaded by Europol’s estimate of a 10% increase in staff costs per annum (around €4 million) plus as yet un-quantified transition costs, since this calculation is based on the current payroll and staff plan. The Commission based its figures on estimates and made some assumptions about staff grades.

In common with the vast majority of the Member States represented in the Europol Working Group, the Government is not persuaded that the introduction of EC Staff Regulations and Community Financing will bring any operational benefit to Europol. Indeed we see increased costs and risks associated with the uncertainty over the bold posts, privileges and immunities and the operation of Joint Investigation Teams, where none exist under the existing arrangements.

The Presidency intends to host a workshop for Article 36 Members early in May, to discuss the issue of EC Staff Regulations and Community Financing, with a view to getting agreement on the way forward at the June Council. The Working Group is currently preparing an options paper for this workshop, the two options being (i) a Council Decision, Community Financing and EC Staff Regulations and (ii) a Council Decision, Member State financing and Europol Staff Rules, with a proposal that the Commission comes back at some later time with a more considered proposal on financing.

**Europol’s Mandate**

You have asked why the change to Europol’s legal base should be accompanied by getting involved in serious crime in addition to its core activities involving terrorism and organised crime. You will be aware that this was a recommendation contained in the Friends of the Presidency report on the future of Europol (EUROPOL 40 9184/1/06 19 May 2006), and it has the support of the vast majority of Member States.

The Government’s concern stemmed mainly from a worry that extending Europol’s operational mandate could divert it from its core business, which we see as being organised crime and terrorism. However that concern has been assuaged to some extent by the comments we have heard in the Europol Working Group that a relatively limited increase is being sought to enable Europol to provide assistance in only the most serious cases. We now believe that some relaxation would improve Europol’s efficiency and effectiveness.

The Government accepts there are occasions where Europol’s support in the investigation of some “serious crime” could be very welcome and this takes account that not all serious crime will have proven links to organised crime or terrorism; relevant examples include child pornography on the internet, serial killings and travelling hooligans. We believe that the issue is less about preventing Europol’s involvement in this area, but more about limiting that involvement.

The Europol Working Group has agreed revised language in the latest draft of Article 4, which would limit Europol’s involvement in serious crime to cross border criminality (affecting two or more member States), which involves a common approach in relation to the scale and significance of the offences.

We will continue to press for further safeguards to limit Europol’s involvement in serious crime, as the discussions in the Working Group move onto the role of the Management Board, and ultimately to the proposed list of offences at Annex I of the draft Council Decision.
LIST OF OFFENCES—ANNEX 1 OF THE DRAFT COUNCIL DECISION

The Government recognises the point you are making about the Commission’s proposal to include the list of offences used in connection with executing a European Arrest Warrant, to define Europol’s “increased area of competence”. However, and without prejudice to my earlier comment that the contents of the list have yet to be discussed at the Working Group, a list of offences would only be intended to provide an indication of the scope of Europol’s involvement and not a test of the definition of particular crimes.

PARLIAMENTARY OVERSIGHT

In common with most Member States at the Europol Working Group, the Government was keen to ensure that there was an appropriate balance of authority between Europol and the Member States. For instance we had concerns about the proposal that Europol could co-ordinate operational actions and the possibility that they could lead Joint Investigation Teams. We believe that proposed amendments to Chapter 1 of the draft Council Decision, particularly to Articles 5 and 6 mean that Europol’s role will remain largely supportive.

Taking this into account, and while the Government is keen to ensure transparency in Europol’s activities, we believe that the extent of parliamentary oversight, while important should be proportionate. We believe that Europol is already one of the most regulated bodies in Europe, particularly with regard to data processing and data protection, and thus far we are broadly satisfied with the provisions which are emerging from the Working Group discussions.

PRIVILEGES AND IMMUNITIES

Finally you asked about the opinion of the Council Legal Service in regard to Article 50. The Council Legal Service did issue an opinion on privileges and immunities (EUROPOL 16—6543/07—19 February) but it did not deal with the specific issue of the legality of Article 50 of the draft Council Decision. The opinion took issue with Article 50 only in as much as it attempts to exempt certain members of Europol staff from being covered by the EC PPI, when under the EC Staff Regulations this is not permissible.

I hope this addresses the points you have made and I will keep the Committee updated on the progress of discussions on the draft proposal.

23 April 2007

JUSTICE AND HOME AFFAIRS COUNCIL, SEPTEMBER 2006 (INFORMAL) AND OCTOBER 2006

Letter from Rt Hon Baroness Scotland of Asthal, Minister of State, Home Office to the Chairman

I thought that it would be useful if I were to write to you about the Informal JHA Council on 21–22 September and the upcoming JHA Council on 5–6 October 2006, since it is not possible for me to make a written statement to the House due to the timing of recess. The Attorney General, Lord Goldsmith, Joan Ryan and Baroness Ashton attended the Tampere Informal on behalf of the UK. The Home Secretary, Baroness Ashton and I will represent the UK at the October Council.

At the informal Council there was lengthy discussion on the Hague Programme Review and specifically on the Presidency proposal to use Article 42 TEU to transfer third pillar cooperation (police co-operation, judicial co-operation in criminal matters) to the first pillar, changing the decision making procedure to qualified majority voting and co-decision. While there were some who supported the use of Article 42 and a move to QMV, a significant number of those who spoke were opposed or expressed concerns of one form or another. The Government stated that unanimity need be no bar to effective action at European Union level, as demonstrated by the European Arrest Warrant and the establishment of Eurojust and the Borders Agency. The Government also set out the concerns which the UK had about the proposal, many of which were shared by other Member States. No formal decisions were taken and the Presidency concluded that it would reflect on the discussion. Whilst the Hague Programme Review is an agenda item at the October Council, we do not expect lengthy or substantial discussion of Article 42, rather, the Presidency is likely to set out some proposals for handling and next steps. The debate is expected to focus on the substance of the work programme in terms of what we have achieved and what remains to be done The government broadly welcomes the four Commission communications published in July that will form the basis for discussion and we will emphasise the need for practical action and delivery of measures already agreed.

Discussions at the informal Council also focussed on achievements in the area of mutual recognition of criminal decisions and the future development of this work, including parallel action to support mutual confidence in Member States’ legal systems. The Commission suggested using the passerelle in Article 42 to
improve decision making procedures and proposed bringing out a study in 2007 on the horizontal problems for discussion and we will emphasise the need for practical action and delivery of measures already agreed.

Discussions at the informal Council also focussed on achievements in the area of mutual recognition of criminal decisions and the future development of this work, including parallel action to support mutual confidence in Member States’ legal systems. The Commission suggested using the passerelle in Article 42 to improve decision making procedures and proposed bringing out a study in 2007 on the horizontal problems affecting this area. It was agreed that more thorough assessments should be made of the practical need for instruments and Member States’ positions before initiatives were presented. The UK commented that the focus should be more on concrete action on the ground and that the EU should be looking less at legislation or harmonisation, but rather at practical measures to encourage mutual confidence.

As regards civil judicial co-operation, there was widespread agreement that this area of work should be looked at more systematically and with more coherence than hitherto, and in particular about the need to simplify cross-border litigation. The UK stressed the need for a focus on practical measures and expressed caution about the possibility of re-opening difficult previous agreements.

The Presidency set out the background and conclusions of the London meeting (a multi-Presidency Ministerial meeting convened immediately after the aviation security alert), and the renewed impetus given to the Counter Terrorism action plan. A suggestion that a Europol/SitCen (EU Joint Situation Centre) analysis should be circulated within 36 hours of any major incident was agreed by Europol. Europol can also help more widely with sharing data on explosives and weapons. The Commission recommended that the EU needed teams of Member States’ experts ready to assist after an attack. We welcomed the focus on delivery stressing that valuable work had been done, but efforts needed to be stepped up and there was concern that the threat was not perceived equally in all Member States. The Presidency concluded that Member States and Europol/Eurojust should improve their cooperation, interoperability needed to improve and the EU Counter Terrorist coordinator should conduct a detailed analysis.

The Presidency and Commission set out the acute problem of illegal migration facing the EU, in particular in the Canaries. There was discussion on the recent problems southern Mediterranean Member States had experienced with migration problems. The Presidency chaired a discussion on the Common European Asylum System and stressed the importance of the 2010 deadline for a common system. Implementation of the Dublin convention and Eurodac needed to be better.

The informal also discussed the topic of terrorism and organised crime. Europol described the main routes for smuggling and called for more information from Member States about heroin smuggling via Russia.

The Commission remains committed to SIS II implementation although a combination of factors has delayed it. Member States accepted that the original implementation timetable will not be achieved and there was concern at the delay and the political implications for new Member States. The Presidency concluded that there would be further discussion at the October Council.

At the October JHA Council we expect there to be discussion of the delay for SIS II implementation at the October Council and consideration of a proposal to enable new Member States to connect to an enhanced version of SIS I within the current timescales. The government regrets the delays to the implementation of SIS II and we will be pushing for every effort to implement it as speedily as possible. Whilst we welcome the attempt to find an interim solution, we have concerns about the feasibility of the new proposal and believe that the implementation of SIS II must not be further delayed. This item will be discuss under the main agenda as well as in the mixed committee of Ministers meeting with Norway and Iceland in the margins of the Council.

The Presidency will be seeking political resolution on whether Community finance should be available to fund the purchase or hire of civil protection equipment, and transport of civil protection assistance in response to disasters. The government does not support the proposal on these funding questions. The UK believes as a matter of principle that disaster response is primarily a national responsibility and allowing Community financing would act as a disincentive to member states building up their own civil protection capacity. The Presidency will be seeking to agree the draft Council Conclusions on reinforcing the southern external maritime border. This item will be discussed under the main agenda as well as in the mixed committee. The government is keen to work with EU partners and neighbouring third countries to prevent irregular migration flows into the EU and will continue to cooperate with the other Member States and Frontex to enhance the security of the external borders.

The Presidency will present the second report from the Commission to the Council on visa waiver reciprocity and there will be discussion on further steps to take. Whilst the UK is not directly involved in EU visa policy, as we retain national control over our borders, the government will be noting the discussion carefully. Schengen countries amended their legislation to take action against third countries who still maintain visa requirements on the newest Member States and whose national can travel to the EU without a visa.
There will be a public deliberation on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the EU. Issues that require resolution centre on the extent of the obligation on Member States to accept the return of a prisoner and the extent to which a prisoner should consent to transfer. There was also a debate on the extent to which the Framework Decision should apply to third country nationals. If the Framework Decision is to have added value the government believes that it should go further than existing Council of Europe arrangements in allowing for transfer without the consent of either the executing State or the prisoner in certain cases. The government believes that the instrument should apply to third country nationals but Member States should have the option to refuse to accept such individuals eg where their right of residence may have expired or been revoked.

The Presidency will be looking to agree that negotiations should continue on the substance of the Directive on criminal measures for ensuring the enforcement of intellectual property rights. The government believes it is clear that the issue of the appropriate legal base (whether this work should be based on a first pillar Directive or third pillar Framework Decision) will not be resolved for some time. Of more concern however is that the government is not convinced that there is a need for European legislation approximating offences and penalties in relation to counterfeiting and piracy. At the Tampere informal JHA Council last month we stressed the importance of improving JHA working methods, in particular by only legislating where there is a proven need to do so. The government believes we need to evaluate the effectiveness of two recent Community Directives before we can conclude that additional legislation is required.

There will be public deliberation of the draft Framework Decision on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings. The Presidency will be looking for a general approach on the Articles of the Framework Decision, with a further discussion of the Recitals and opinion of the European Parliament scheduled for a working group thereafter. The Presidency has made efforts to address Member States’, including the UKs, concerns on this proposal and we are therefore generally content with the revised version of the text.

The Presidency will be seeking to secure a Council decision on the Commission proposal for definitive anti-dumping measures against imports of certain footwear. The government is not able to support this proposal as we believe the Commission has not demonstrated that it is in the Community Interest.

The Presidency will not be seeking political agreement on the proposal to establish the Fundamental Rights Agency but will make a statement on the progress made on this dossier.

There will be information items from the Presidency and Commission respectively on a European Conference on active participation of ethnic minority youth in society and the possibility of initiating negotiations on visa facilitation and readmission agreements with Moldova.

4 October 2006

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

I thought that it would be useful if I were to write to you about the Informal JHA Council on 21-22 September and the upcoming JHA Council on 5-6 October 2006, since it is not possible for me to make a written statement to the House due to the timing of recess. The Attorney General, Lord Goldsmith, Joan Ryan and I attended the Tampere Informal on behalf of the UK. The Home Secretary, Baroness Scotland and I shall be attending the JHA Council in October.

There was lengthy discussion on the Hague Programme Review and specifically on the Presidency proposal to transfer areas of third pillar cooperation (police cooperation, judicial cooperation in criminal matters) to the first pillar, changing the decision making procedure to qualified majority voting and co-decision. No formal decisions were taken and the Presidency concluded that it would reflect on the discussion and propose a way forward at the October JHA Council and December European Council. Whilst the Hague Programme Review is an agenda item at the October Council, we do not expect lengthy or substantial discussion, rather, the Presidency is likely to set out some proposals for handling. The government broadly welcomes the four Commission communications published in July that will form the basis for discussion and we will emphasise the need for practical action and delivery of measures already agreed.

The Presidency were keen to see achievement in the area of mutual recognition in criminal decisions and the Commission suggested using the passerelle in Article 42 to improve voting procedures and proposed bringing out a study in 2007 on the horizontal problems affecting this area; this study was welcomed. It was agreed that more thorough assessments should be made of the practical need for instruments and member states position before initiatives are presented. The UK commented that the focus should be more on concrete action on the
ground and that the EU should be looking less at legislation or harmonisation, but rather at practical measures.

As regards civil judicial co-operation, there was widespread agreement that this area of work should be looked at more systematically and with more coherence than hitherto, and in particular about the need to simplify cross-border litigation. The UK stressed the need for a focus on practical measures and expressed caution about the possibility of re-opening difficult previous agreements.

The Presidency set out the background and conclusions of the London meeting, and the renewed impetus given to the Counter Terrorism action plan. A suggestion that a Europol/SitCen (EU Joint Situation Centre) analysis should be circulated within 36 hours of any major incident was agreed by Europol. Europol can also help more widely with sharing data on explosives and weapons. The Commission recommended that the EU needed teams of member states’ experts ready to assist after an attack. We welcomed the focus on delivery stressing that valuable work had been done, but efforts needed to be stepped up. There was concern that the threat was not perceived equally in all member states. The Presidency concluded that member states and Europol/Eurojust should improve their cooperation, interoperability needed to improve and the EU Counter Terrorist coordinator should conduct a detailed analysis.

The Presidency and Commission set out the acute problem of illegal migration facing the EU, in particular in the Canaries. There was discussion on the recent problems southern Mediterranean member states had experienced with migration problems.

The Presidency presented a paper on the Common European Asylum System and stressed the importance of the 2010 deadline for a common system. Implementation of the Dublin convention and Eurodac needed to be better. The Presidency concluded that they would proceed as their paper set out.

The Presidency presented a paper on terrorism and organised crime. Europol described the main routes for smuggling and called for more information from member states about heroin smuggling via Russia.

The Commission (Franco Frattini) remains committed to SIS II implementation. A combination of factors has delayed SIS II. All member states agreed that the original timetable was not technically possible. There was concern at the delay and the political implications for new member states. The Presidency concluded that there would be further discussion at the October Council.

We expect there to be discussion of the delay for SIS II implementation at the October Council and consideration of a proposal to allow new Member States to connect to SIS I within the current timescales. The government regrets the delays to the implementation of SIS II and we will be pushing for every effort to implement it as speedily as possible. Whilst we welcome the proposal for an interim solution we believe that the implementation of SIS II must not be further delayed. This item will be discussed under the main agenda as well as in the mixed committee.

The Presidency will be seeking to find political resolution of a question of whether Community finance should be available to fund the purchase or hire of civil protection equipment, and transport of civil protection assistance. The government does not support the proposal on these funding questions; the UK believes that disaster response is primarily a national responsibility.

The Presidency will be seeking to agree the draft Council Conclusions on reinforcing the southern external maritime border. This item will be discussed under the main agenda as well as in the mixed committee. The government is keen to work with EU partners and neighbouring third countries to prevent irregular migration flows into the EU and will continue to cooperate with the other Member States and Frontex to enhance the security of the external borders.

The Presidency will present the second report from the Commission to the Council on visa waiver reciprocity and there will be discussion on further steps to take. Whilst the UK is not directly involved in EU visa policy, as we retain national control over our borders, the government will be noting the discussion carefully. Schengen countries amended their legislation to take action against third countries who still maintain visa requirements on the newest Member States and whose national can travel to the EU without a visa.

There will be a public deliberation on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the EU. Issues that require resolution centre on whether there should be an obligation on Member States to accept a prisoner and the extent to which a prisoner should consent to transfer. If the Framework Decision is to have added value the government believes that it should create an obligation on the executing State to accept a prisoner and an increase in the circumstances under which a prisoner can be transferred without consent.
The Presidency will be looking to agree that negotiations should continue on the substance of the directive on criminal measures for ensuring the enforcement of intellectual property rights. The government believes it is clear that the issue of the appropriate legal base will not be resolved for some time. At the Tampere informal JHA Council last month we stressed the importance of improving JHA working methods, in particular by only legislating where there is a proven need to do so. We are not convinced that there is a need for European legislation approximating offences and penalties in relation to counterfeiting and piracy. The government believes we need to evaluate the effectiveness of two recent Community Directives before we can conclude that additional legislation is required.

There will be public deliberation of the draft Framework Decision on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings. The Presidency will be looking for a general approach on certain articles. The Presidency has made efforts to address Member States’, including the UKs, concerns on this proposal. We are generally content with the revised version of the text.

The Presidency will be seeking to secure a Council decision on the Commission proposal for definitive antidumping measures against imports of certain footwear. The government is not able to support this proposal as we believe the Commission has not demonstrated that it is in the Community Interest.

The Presidency will not be seeking political agreement on the proposal to establish the Fundamental Rights Agency but will make a statement on the progress made on this dossier.

There will be information items from the Presidency and Commission respectively on a European Conference on active participation of ethnic minority youth in society and the possibility of initiating negotiations on visa facilitation and readmission agreements with Moldova.

5 October 2006

JUSTICE AND HOME AFFAIRS COUNCIL, FEBRUARY 2007

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

I thought it would be useful if I were to write to you about the JHA Council on 15 February since it is not possible for me to make a written statement to the House due to the timing of the recess.

A key part of the German Presidency is the integration of the Prüm convention into European Union law. Information sharing between police and law enforcement agencies provides a vital tool in the investigation, detection and prevention of crime. It has the potential to aid the fight against cross-border crime and the detection of individuals, including foreign nationals who have committed crimes abroad and those who have committed crimes and travelled abroad to prevent detection. The UK therefore welcomes the work that the Presidency has done on the transposition of the Prüm Convention into EU law. We continue to have concerns about article 18 which, as currently drafted, does not preclude “hot pursuit” and we will continue negotiations on this article.

Another priority for the Presidency is the Prisoner Transfer proposal and they will be looking to reach a general approach. Further work is required on some aspects of the proposal and the UK has made clear to the Presidency that it remains subject to domestic parliamentary scrutiny in the meantime. We would expect political agreement on the text as a whole to follow thereafter. The UK attaches considerable importance to finalising this measure, which we believe will add considerable value to existing prisoner transfer arrangements. We are looking to finalise negotiations on this proposal as soon as possible so that implementation can commence and the benefits to Member States and prisoners can take effect.

On migration the Presidency will table a communication for discussion to further explore the concept of migration partnerships as a means of launching an comprehensive relationship with third countries on migration issues. The Presidency’s priority is to take forward the concept of partnerships with third countries. Whilst the UK welcomes this initiative, we need to have a flexible approach to model such agreement on the needs of individual third countries. We believe that this is a complex area which requires through examination and we anticipate that the Commission’s communications, published in due course, will be a basis for developing more concrete proposals.

The Schengen Information System (SIS), SIRENE and VISION will be discussed under both the main agenda and in the mixed committee with the aim of ensuring provision of a network service for these in light of the delay to the implementation of SIS II and connection of the new Member States to SISOne4All. The UK’s preferred option is an extension of the SISNET network with S-Testa as a backup option. We are also committed to minimising any further delays to the implementation of SIS II.

Other items in the mixed committee include SISOne4All in which the UK is not participating and an update on the rescheduling of SIS II in light of the implementation of SISOne4All.
Finally in the mixed committee the Presidency will take the opportunity to update Ministers on the progress of negotiations on a draft Regulation creating Rapid Border Intervention Teams (RABITs). Frontex will also be looking to Member States to contribute to a centralised register of technical assets. The UK believes that the RABITs proposal is an important concept and having teams able to respond rapidly to unexpected influxes of immigration is a positive development. However, a number of important issues remain to be resolved. On the technical assets side the UK is looking at contributing human resources for training and operations as well as other assets such as New Detection Technology and forgery detection equipment.

There is likely to be a lunch-time discussion on the proposal for a Council Framework Decision on combating racism and xenophobia. The Presidency is keen to reach swift agreement on the Framework Decision and whilst the UK believes it to be worthwhile, previous experiences have shown this to be a difficult and contentious dossier. For example, we understand and respect that some States ban holocaust denial, but there is a consensus in the UK, across the political spectrum and including from members of the Jewish community, that this is not an approach that we should adopt in the UK. Another outstanding issue for the UK is that we do not support the text on mutual legal assistance proposed at Article 8(2). We believe that this has now been superseded by the agreement on the European Evidence Warrant, which would govern requests for evidence in relation to racist and xenophobic crime.

13 February 2007

MEETINGS OF G6 INTERIOR MINISTERS

Letter from the Chairman to Rt Hon John Reid MP, Secretary of State for the Home Department, Home Office

You may remember that on 10 May I invited you to nominate a minister to give evidence to Sub-Committee F of the Select Committee on the European Union, which was then starting an inquiry into the meeting of the G6 interior ministers at Heiligendamm, on 22–23 March 2006. In your reply of 6 June you gave us details of the workings of G6 meetings in general, and you answered a number of specific questions. At that stage you thought it unnecessary for a minister to give oral evidence to the Sub-Committee, but following a further letter from me of 7 June, Joan Ryan MP and Peter Storr helpfully came to give oral evidence to the Committee on 28 June. (Our correspondence is set out in Appendix 4 of the Select Committee report on the Heiligendamm meeting, which was published on 19 July—40th report of the session 2005–06, HL Paper 221.)

You explained in your letter of 6 June that you did not think it right to give oral evidence at that time because the Heiligendamm meeting had been attended by your predecessor. But you very helpfully added: “I would be happy to brief your committee after the next G6 meeting, which I will be chairing and is provisionally booked for 26–27 October”. Joan Ryan has reiterated your offer to give evidence to the Committee in her letter to Lord Wright of 18 October, responding to our report.

The G6 meeting has now taken place at Stratford-upon-Avon, and we have seen the Conclusions. We would like to take you up on your offer. We would be very grateful to hear oral evidence from you about the matters discussed.

I have asked the Clerk to the Sub-Committee to be in touch with your private office to arrange a mutually convenient date for this.

30 October 2006

Letter from Rt Hon John Reid MP to the Chairman

I am writing in response to your letter of 30 October in which you invited me to provide oral evidence to your Committee on the matters discussed at the G6 meeting that I chaired at Stratford-upon-Avon. I should apologise for the delay in replying.

I hope that the appearance before your Committee by Ministers and officials from the HO and DCA in June gave you sufficient opportunity to question the Government about the Heiligendamm meeting and the G6 more generally.

In my letter to you dated 6 June I said I would be happy to brief the Committee after the Stratford meeting. Joan Ryan wrote to you on 8 November with a link to the Conclusions from the Stratford-upon-Avon meeting. These conclusions contain the substance of the issues that were discussed and agreed.

There were only two other real issues that were raised. The first was on the question of how international legal frameworks shape the possibilities of effective counter-terrorist action, where we agreed to share at expert level national experience and practice. The second was a Franco-German paper on migration, which was discussed
in the meeting and subsequently at official level before forming the basis of a G6 letter to the EU Commission and Presidency. The letter proposed some ideas and priorities for EU action in the area of migration management, border control, illegal immigration and asylum. It was sent in the spirit of stimulating EU level debate and action. I attach a copy for information (not printed).

I know that the Committee has asked that I appear in person to give oral evidence. However, while I am not opposed to doing so in principle my diary commitments are already onerous. Given that the Conclusions from Stratford are comprehensive and freely available and that Ministers have already appeared before the Committee, I hope that instead you might be satisfied with the additional written evidence provided in this letter and the offer to answer in writing any further substantive questions you might have. Of course, I will also ensure that you are provided with information about future G6 meetings.

20 December 2006

Letter from the Chairman to Rt Hon John Reid MP, Secretary of State for the Home Department, Home Office

Thank you for your letter of 20 December 2006 in reply to mine of 30 October. Sub-Committee F (Home Affairs) of the European Union Select Committee considered it at a meeting on 17 January, together with your letter of 20 November to the Minister of the Interior of Finland (which you enclosed) and the G6 Migration Paper which you had enclosed with the letter to the Minister. We are most grateful for a sight of this interesting paper.

The Committee have, as you said, had an opportunity to consider the Conclusion of the meeting at Stratford-upon-Avon, and the additional points made in your letter. There are still a number of matters which they would have liked to have the opportunity to put to you in oral evidence, not just about the Conclusions of that meeting, but about the G6 meetings generally. We note that you are not opposed in principle to appearing before the Committee in person. However nearly three months have now elapsed since the Stratford-upon-Avon meeting, and given your diary commitments, further time would inevitably elapse before a mutually convenient day could be found for a meeting with the Committee. They have regretfully decided that at this stage no useful purpose would be served by such a meeting. They propose instead to prepare a brief report on the Government response to the earlier report on the Heiligendamm meeting, which might look also at some aspects of the meeting at Stratford-upon-Avon.

18 January 2007

PASSENGER NAME RECORDS (PNR): AGREEMENTS WITH THE US (13216/06, 13226/06, 13668/06)

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

Thank you for your letter of 19 July 2006 providing formal scrutiny clearance for the document on the termination of the agreement between the European Community and the United States of America on the processing and transfer of PNR data (Document 10613/06). Your letter also sought further information on five related points: I am pleased to provide greater detail on each of these issues below and also to provide you with a more general update on this area. I would also like to take this opportunity to apologise for the delay in responding to your letter. The situation regarding the transfer of PNR data changed rapidly up to, and after, the end of recess. I was keen to provide you with a detailed and accurate picture of the EU-US arrangements and this has led to an inevitable delay while the situation has stabilised.

As you will be aware, agreement was reached on 6 October on an interim agreement which will be renegotiated before the end of July next year. Our guiding principle during negotiations was to ensure that the priority of fighting international terrorism was properly balanced against individuals’ privacy rights. This involved sharing data with the US, but within a framework providing adequate controls over—amongst other things—who has access to those data, how they may be used and how long they may be retained. The text of the new agreement reflects changes made to US legislation and does not materially affect the level of protection for individuals’ data. The texts of the new agreement, the US letter interpreting the undertakings to the agreement (the undertakings themselves have not changed) and the Council Decision on the signing of the agreement have been deposited and an EM provided (13216/06) which sets out further detail. The new agreement has applied provisionally since it was signed last month and will come fully into force on the first day of the month following the exchange of notifications, indicating that both sides have completed their relevant internal

procedures; a number of Member States are still in the process of complying with the requirements of their own constitutional procedures on this matter.

As you will see, the US continues to abide by the undertakings and there is no extension to the number of data elements the US may access (additional Frequent Flyer field information can now be accessed, but only where it corresponds with the data elements already permitted, for example, the billing address, the reservation date and so on). The period of data retention remains at 3.5 years and access by other US enforcement agencies will be on a strictly case-specific basis and will not be automatic. We believe that the new agreement strikes the balance we were seeking.

Turning now to your more specific questions, you asked whether the undertakings given by the US Bureau of Customs and Border Protection (CBP) in the new agreement were likely to differ from those in the original agreement. Strictly speaking, the US undertakings were not in the agreement; they were annexed instead to the Commission’s adequacy decision and came into force at the same time as the agreement, but your point is still an important one. As you will now be aware, the new agreement still refers to the undertakings (albeit there are fewer references to them) and they have not been renegotiated. Our view on this matter was that the text of the new agreement and undertakings should change as little as possible, but that the agreement’s legal base should under the third pillar rather than the first. Naturally, any amendment which reduced the protection of our nationals’ data would not have been welcomed.

You also asked whether, and if so why, an entirely new agreement would be needed before October 2007. A new agreement will be required by the end of October 2007 because the original agreement was due to remain in force only until November 2007. The purpose of the original timeframe was to provide an opportunity for both the US and the EU to thoroughly review the agreement and re-negotiate new and more permanent terms. As you know, the ECJ ruling required the negotiation of a new agreement by the end of September; both sides worked hard to meet this deadline, reaching agreement on 6 October. Given the challenging timeframe for the negotiation of this document, and in recognition of the fact that it was originally considered necessary to provide for an adequate opportunity for re-negotiation, it seemed sensible to negotiate a “temporary” agreement along the lines of the original and to revisit this interim document before July next year.

You also sought information about attempts by the government to ensure the data protection undertakings offered by the CBP are more realistic than those in the original agreement. Our view is that the undertakings agreed to by the US and annexed to the original adequacy decision provided an adequate level of data protection, taking into account both the US’ and Member States’ data protection provisions. We were naturally keen to ensure that a high level of data protection was maintained in the new agreement, and will work with the Commission and other Member States to ensure this is also the case in future agreements. I think it is worth noting here that Commission conducted an adequacy test on US data protection standards before the original agreement was entered into and this test confirmed US data protection provisions to be indeed adequate; you will of course be aware that the ECJ ruling that declared this adequacy decision to be invalid was only on the grounds of an incorrect legal base and did not question the substance of the Commission’s conclusion on the adequacy of US data protection standards. You may be interested to know that the EU’s assessment of the US’ implementation of the PNR undertakings (conducted last summer) resulted in a generally positive report. This report noted that the US authorities went significantly beyond what was strictly required to meet this deadline, reaching agreement on 6 October. Given the challenging timeframe for the negotiation of this document, and in recognition of the fact that it was originally considered necessary to provide for an adequate opportunity for re-negotiation, it seemed sensible to negotiate a “temporary” agreement along the lines of the original and to revisit this interim document before July next year.

You also asked whether the government considers there to be a case for activating the passarelle on this matter. We have general concerns about the potential impact of the Article 42 proposal. We could only begin to consider changes to current arrangements for third pillar matters once we are satisfied that our concerns can be met. Our view in this case was that in light of the ECJ judgement, which of course declared the original agreement invalid on the grounds of an incorrect first pillar legal base, the new agreement with the US needed to be subject to third pillar legislation. For this reason alone, it would appear to be inappropriate to have activated the passarelle here. However, we are continuing to look at the detailed implications of Article 42 more generally.

Additionally, you raise the issue of the parallel agreement between the EC and Canada. Although the time has now elapsed for a similar challenge to be mounted against this agreement, it would appear that the reasoning behind the judgment on the EU-US agreement would also seem to apply to the Canadian agreement and the Commission and the Council will be reflecting on the implications of the ECJ ruling. The UK’s Air Navigation Order laid in relation to the EU-US agreement has been drafted in such a way that it may also apply to a future third pillar agreement with Canada.
I hope this letter provides you with the information you were seeking. As ever, I am very happy to discuss any aspect of this matter further.

13 November 2006

Letter from the Chairman to Rt Hon Baroness Ashton of Upholland

Sub-Committee F (Home Affairs) of the European Union Select Committee considered the PNR agreement and related documents at a meeting on 22 November 2006.

As you know, the Committee considered on 19 July documents dealing with the termination of the earlier PNR agreement, and I wrote to you with a number of questions. I am grateful for your reply.

One of the matters I raised was the activation of the passerelle. Since I wrote, this has become even more of an issue on a number of fronts, and we agree with you that it would not be appropriate to activate the passerelle in relation to this issue alone.

Another question I raised was the parallel agreement with Canada. We are glad that the Order in Council amending the Air Navigation Order is in terms that allow it to be applied to any country outside the EEA. You state that the Commission and Council are reflecting on the implications of the ECJ ruling. Since a challenge to the legal base of the EC/Canada agreement would inevitably succeed, we are surprised that the Commission has not already begun negotiations for a revised EU/Canada agreement. We would be grateful if you could inform us in due course of any developments on this front.

Aside from these two points, your letter deals principally with the questions I raised about the negotiations for a revised agreement, then being contemplated but now completed. I am grateful to you for setting out what has happened, although much of this of course duplicates what was in your Explanatory Memorandum of 23 October.

The main question raised in my letter was how, if at all, the Undertakings given by the US Bureau of Customs and Border Protection (CBP) in the agreement which was then being negotiated were likely to differ from those in the earlier agreement. You explain that the Undertakings are now given by the Department of Homeland Security DHS), and we agree that this makes no practical difference.

Your explanatory memorandum states that “The changes to the agreement do not materially affect the level of data protection for individuals.” In your letter you similarly say: “The text of the new agreement reflects changes made to US legislation and does not materially affect the level of protection for individuals’ data.” You refer to the documents deposited as including the new agreement and “the US letter interpreting the undertakings to the agreement (the undertakings themselves have not changed)”. The Undertakings, as you say, have not changed. There were always some doubts about their adequacy, although not on the part of the Commission. But your passing reference to the letter from Mr Stewart Baker, the Assistant Secretary for Policy at the DHS, is where in our view the problems lie.

It seems to us that this letter, annexed to document 13668/06, makes a number of major changes to the effect of the Undertakings, of which we list four.

— The DHS letter says the Undertakings authorise it to “add data elements” to the 34 already listed. You say that “there is no extension to the number of data elements the US may access”. Paragraph 7 of the Undertakings requires the DHS to consult with the Commission if it wishes to add data elements. How are these statements to be reconciled?

— Paragraph 29 requires PNR information to be shared with other departments and with “counter-terrorism and enforcement functions” (eg CIA and FBI) only on a case by case basis. You say this is unchanged. The letter, relying on the catch-all paragraph 35 that the Undertakings shall not “impede the use or disclosure of PNR data . . . as required by law”, points out that US law changed last year, and now requires DHS “promptly to give access to terrorism information to the head of each agency that has counter-terrorism functions”. DHS now has to “facilitate the disclosure” of PNR data to these authorities. We are not entirely reassured by the fact that “DHS will ensure that such authorities respect comparable standards of data protection to that applicable to the DHS”.

— The letter points out that data more than 3.5 years old “can be crucial in identifying links among terrorism suspects”. Because the agreement will have expired before the Undertakings require any destruction of data, “any questions of whether and when to destroy PNR data . . . will be addressed by the US and the EU as part of future discussions”. You tell us that the period of data retention remains at 3.5 years. It seems to us rather that there is no limit at all other than the limit prescribed by US law which, we are told, is currently 40 years.
— Paragraph 3 provides: “PNR data are used by [DHS] strictly for purposes of combating terrorism and related crimes” and analogous matters, while paragraph 9 provides that DHS will not use sensitive data concerning the health of the individual. This however is qualified by paragraph 34 where the vital interests of the data subject “or others” are at stake. In effect, the letter is now saying that PNR data will be used in the fight against “dangerous communicable disease”—no doubt avian flu.

The Undertakings were already in our view compromised by the provisions of paragraphs 34 and 35 allowing them to be departed from where the US authorities thought this essential, or where US law so required. The letter is in our view simply a statement showing that the US does intend to collect data which it was not originally permitted to collect. does intend to use it for purposes for which it was not originally intended, and does intend to distribute it to bodies not previously allowed to receive it in this form.

The Government may feel that there are excellent reasons for these changes, whether for enhanced security or on other grounds. If so, the changes should in our view have been the subject of negotiation between the EU institutions and the US authorities, and prior approval by the Member States, rather than the subject of a unilateral declaration by the US in a letter sent by email a week after the new agreement was finalised.

We would be grateful for your comments on the points raised above, and for your answers to the following questions:

— Was the Government aware, when it approved the draft agreement, that the US intended to broaden its scope in this way?
— Is the Government still satisfied that, despite the changes we have mentioned, the level of protection of personal data is adequate?
— What are the views of other Member States on this question?
— What line does the Government intend to take when the German Presidency begins work on the negotiation of a third agreement to replace this one, which expires in July 2007?

We have decided to clear from scrutiny documents 13216/06 and 13226/06, but to keep under scrutiny document 13668/06, which includes Mr Baker’s letter.

22 November 2007

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

Thank you for your letter of 22 November regarding the Agreement between the European Union and the United States of America on the Processing of Passenger Name Record (PNR) data. I am pleased that you have cleared documents 13216/06 and 13226/06 from scrutiny.

In your letter you ask for further information on several issues and you also raise a number of specific points in relation to Stewart Baker’s letter to the EU. I have dealt with each of these in turn below.

The first concern you raise relates to whether the US may add “new data elements” to the 34 already permitted under the Agreement. The US authorities may indeed seek to add new data elements, but the EU must first be consulted over any additions or revisions to the data elements, as required by paragraph 7 of the undertakings. The interim Agreement of October 2006 does not increase the number of data elements the US authorities may access, but the US letter of interpretation notes the US understanding that it may access permitted data in whichever of the 34 permitted data elements they occur. For example, the US may access reservation date and billing address data: this was previously only obtained from elements 2 and 8 in Annex A to the Undertakings but the US will now also access those permitted data in the frequent flyer fields too. The US consulted by way of the letter of interpretation from Stuart Baker on its intention to also access the frequent flying number; this number is part of the data contained within the frequent flyer field, and so does not in fact constitute a new additional data element.

You also raised concerns regarding the Department for Homeland Security’s (DHS) sharing of PNR data with other departments possessing “counter-terrorism and enforcement functions”, following changes to US legislation. All disclosures will be facilitated by the DHS and no agency will be given unconditional direct electronic access to the PNR data. In addition, data will only be shared with these agencies once they have confirmed in writing to the DHS that they will provide comparable standards of data protection to those applicable to the DHS. The DHS must then inform the EU in writing of the implementation of such facilitated disclosure and the agency’s respect for comparable data protection standards. Under the terms of the Agreement, any EU Member State or the Commission can refuse to supply PNR data if they are not confident that appropriate data protection is being provided. Similarly, if airlines believe that an inadequate level of data protection is being provided, they can also refuse to supply PNR data. I am confident that the mechanisms in
place should ensure that all US authorities will abide by comparable levels of data protection in order to have continued access to PNR data.

You also raised concerns regarding the length of time data may be retained by US authorities before deletion. The period of data retention in the new Agreement remains at three and a half years. As you note, this time limit will be reconsidered during negotiations for a more permanent Agreement, due to begin shortly. However, any data that are to have been transferred under the original and current Agreements will continue to attract a data retention period of 3.5 years.

The final concern you raise in relation to Stewart Baker’s letter is about the use of PNR data in situations involving a “dangerous communicable disease”. This issue is about protecting the vital interests of the data subject if they were believed to be in danger from such a virus or disease. Paragraph 34 of the undertakings notes that disclosure may be made for the “protection of the vital interest of the data subject or other persons, in particular as regards significant health risks”. In cases such as avian flu, where the disclosure of PNR data to relevant authorities was in the vital interests of the data subject or others, we would therefore be content with the use of PNR data for this purpose.

In your letter you also asked whether the Government was aware of the US intention to broaden the scope of the draft Agreement. The Government was aware that the US authorities were likely to press for fewer restrictions on the use of PNR data and a relaxation of the undertakings. However, we do not believe that the Agreement has been broadened to any significant or dangerous degree. It would seem likely that negotiations on a new and more permanent Agreement will be challenging and that the USA is likely to press for more material changes to the Agreement and undertakings. We understand that negotiations will begin very soon and expect the Presidency and the Commission to negotiate on behalf of the EU to ensure that our nationals data is protected and UK citizens’ privacy is maintained. The Government considers that PNR data can help prevent and combat terrorism and related crimes but that the use of this data must be appropriately balanced against the privacy and rights of UK citizens.

Further, you asked whether the Government was still satisfied that an adequate level of data protection is provided with regard to PNR data. The UK Government is of the view, as are all other Member States and the Commission, that the level of data protection set out in the undertakings annexed to the current Agreement is indeed adequate. Moreover, airlines will shortly be moving from a “pull” to a “push” system for transferring PNR data which will further improve data protection safeguards: in short, airlines will extract the relevant data from their reservation systems and transfer that data to the DHS, instead of the DHS extracting it themselves. This transition is expected to take place in around March or April and is supported by the Information Commissioner. I am unable to comment on individual Member States’ positions during the negotiations due to the confidential nature of those negotiations, but as I have noted above, all Member States agreed that the terms of the Agreement and the undertakings provided an appropriate level of protection.

I hope that this response provides you with the information you were seeking. As ever, I would be very happy to discuss this matter further.

16 February 2007

Letter from the Chairman to Rt Hon Baroness Ashton of Upholland

I am grateful for your very full reply of 16 February 2007 to my letter of 22 November 2006. Sub-Committee F (Home Affairs) of the European Union Select Committee considered it at a meeting of 28 February 2007. As you know, the Committee believe that the PNR Agreement raises a number of important questions, and has begun an inquiry into it. I understand that DCA will be giving written evidence, and that you have kindly agreed to give oral evidence on Wednesday 7 March. No doubt this will be the best occasion for the Committee to raise with you any further questions. Meanwhile we will continue to keep this document under scrutiny.

1 March 2007

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

During my appearance before sub-Committee F (Home Affairs) on 7 March I undertook to write with some additional information on the e-Borders Programme, Project Semaphore and our successful use of passenger data.

e-Borders is a medium- to long-term initiative to re-shape the UK’s border co-ordinated by the Home Office Immigration and Nationality Directorate (Border and Immigration Agency from April 2007) in partnership with other border agencies (HM Revenue and Customs, the Intelligence Agencies, the Police Service and UKvisas). Other departments and agencies such as the Department of Work and Pensions and the Identity and Passport Service are involved as major potential beneficiaries of the e-Borders data. The programme
contract award is scheduled for 2007, with significant operating capability planned for July 2008, and full e-Borders capability in 2014.

Project Semaphore was launched in November 2004 as an operational prototype to trial e-Borders concepts and technology in order to inform and de-risk e-Borders. The pilot has been capturing passenger information on selected routes, and assessing it against watch lists. Based on the assessment, where a passenger is of interest, an alert is usually issued to the relevant partner agency for appropriate action to be taken. The Joint Border Operations Centre (JBOC) is the operational hub of Project Semaphore and manages the data captured and generates alerts to the border security agencies. Significant operational successes have been achieved, including the arrests on arrival or departure of those wanted for serious crimes, such as murder, rape, drug and tobacco smuggling as well as passport offences. To date nearly 900 arrests have been made.

The two key types of data received by project Semaphore are Advanced Passenger Information (API) and Passenger Name Records (PNR). API is usually used to refer to the information contained in a passenger’s travel document, including the name, date of birth, gender, nationality and travel document type and number. PNR data is a term specific to the air carrier industry and relates to information held in a carrier’s reservation system and consists of a number of elements which may include date and place of ticket issue, method of payment and travel itinerary.

We are currently collecting passenger data from 40 carriers, amounting to 20.9 million annualised passenger movements. Project Semaphore currently receives API data on flights from 72 non-UK arrival and departure points. Recent API checks have led to a number of police national computer matches, including the identification of three men wanted for murder during riots in Birmingham last year. They were arrested at Heathrow and have since been convicted and sentenced to life imprisonment. These checks have also led to immigration service matches, such as the identification of holders of fraudulently obtained passports who have consequently been refused leave to enter the UK. We are negotiating with carriers to expand our data access in order to achieve the IND Review target of 30 million movements by April 2008.

PNR data is used in Semaphore to identify “associated passengers” on bookings. It is also used to identify passengers who are in-transit through the UK rather than arriving (thus reducing unnecessary alerts). In January 2007 23 successes were recorded by Project Semaphore as a result of automated profiling based on passenger data. For example, HMRC were alerted by PNR data to a passenger whose booking was made the day before travel and paid for in cash, who had an overnight stay in the UK before onward travel to Houston. The check of onboard details by a JBOC analyst showed a change in the routing to depart from Gatwick to Houston, which matched a previous successful HMRC profile. The alert was passed directly to HMRC at Heathrow, where he was intercepted on arrival and five kilos of cocaine was found in his baggage. He was arrested and charged.

I would also like to advise you that a future EU common framework on PNR data is being considered by the European Commission. An informal consultation has been carried out and a draft framework decision may be brought forward later this year. There is no set date. We look forward to this proposal, and hope that it will be as flexible as possible to maximise the benefits of PNR data.

30 March 2007

PRÜM TREATY: INCORPORATION INTO EU LAW

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

I thought it would be helpful to write to you in advance of the February JHA Council to give you some early information on German Presidency handling in relation to the possible incorporation of the Prüm Convention into EU law.

As you know from my recent written statement on the outcome of the Informal JHA Council in Dresden, the current Presidency has made clear that incorporation of Prüm is one of its top priorities in the JHA area, and indicated then that it intended to bring forward a formal proposal to that effect in advance of the February Council. The latest draft agenda for the Council has an item on it entitled “Integration of the Prüm Convention into the Union legal order—Discussion and Decision on further proceeding”.

Although no such formal proposal has yet been tabled (and, hence, no EM yet submitted), we hope to have a formal proposal by the beginning of next week in advance of the JHA Council. However the Presidency has now circulated draft Council Decisions on the transposition of the Prüm Convention, which are likely to be similar to the formal proposal. I wanted therefore to draw these to your attention as soon as I was able and to inform you of the Government’s intended approach to the Council discussion.
In broad terms, we favour in principle the rapid incorporation of Prüm into EU law, since we believe that it has the potential to provide UK police and law enforcement agencies with additional valuable tools in the fight against cross-border crime and the detection of individuals, including foreign nationals, who have committed crimes abroad and individuals who have committed crimes and travelled abroad to prevent detection.

DATA SHARING PROVISIONS

In particular, the key data sharing aspects of Prüm, which form the main element of the draft Council Decisions, implement the principle of availability, agreed by the Council in 2004. Prüm provides a ready-made mechanism for the exchange of information between police and law enforcement bodies in relation to DNA, and fingerprint data, on a “Hit/No Hit” basis and subject to appropriate data protection arrangements.

In Germany and Austria where parts of the Prüm Convention and therefore, Annex A is already being implemented, the operation of the “hit/no hit” system has resulted in hits on a large number of murders, rapes and other serious crimes with a cross-border element. I should make clear that the “Hit/No Hit” basis means that any search against appropriate databases would do no more than confirm the existence of this strand on the database of the other member state (hit) or to deny the existence on the database (no hit). Any further personal information would have to be obtained through Mutual Legal Assistance, as is the current situation. Therefore Prüm does not give greater access to personal information but allows for the police to locate and obtain the information more swiftly.

The Informal Draft Council Decision would allow for direct access to vehicle registration data, this would mean access to the data on Vehicle Registration but not to driver licensing data. It should be noted that this is the same data that private companies and the general public can access for a small fee.

ARTICLE 18—MEASURES IN THE EVENT OF IMMEDIATE DANGER

Article 18 of Annex A is one of the reasons that the UK was cautious about signing the original Prüm Convention (In which Article 18 is Article 25, attached for your reference Annex B). The Article is designed for states with extensive land borders who may have a situation, such as a train crash, which would need to be immediately dealt with by the nearest police. We therefore doubt that it is operationally feasible or desirable for the UK.

In addition, whilst the focus is on urgent situations, the Article does not preclude “hot pursuit” in a situation such as a kidnapping where there may be “immediate danger to life or limb.” The UK does not participate in Article 41 of the Schengen Aquis on “hot pursuit”. Furthermore, Article 18 (4) requires signatories to accept liability for foreign officers operating in our territory. This would require primary legislation.

Therefore we will seek to ensure our concerns are addressed in negotiations, possibly including exploring the possibilities of an opt out or the removal of the Article altogether.

DATA PROTECTION

We are satisfied that the data protection provisions in the Informal Draft Council Decisions are robust and largely compliant with UK national law on the sharing of information with other European Member States. It should also be noted that if the Data Protection Framework Decision comes into force in the future, it will apply to all third pillar measures (Annex A.)

OTHER PROVISIONS

The Informal Draft Council decision also allows for the sharing of information for the prevention of terrorist offences and for the maintenance of public order. This would not involve the UK sharing any more information than that which we already do. It also includes an Article on Joint Operations; this defers to national law and does not therefore extend any powers to foreign police on UK soil. This will not therefore extend the powers of foreign police to carry firearms on the UK territory.

FINANCIAL IMPPLICATIONS

Germany have stated that the costs to them of implementing the Prüm Convention, including the provisions that are included in the Informal Draft Council Decision, have been in the region of €900,000. We are considering in detail what the financial implications for the UK might be but the initial view of UK experts is that the costs associated with implementing Prüm among all 27 EU Member States may be considerably
higher, depending in part on the precise technical arrangements for allowing Member States to link into one another's systems. We are currently exploring with Germany and other existing Prüm participants the basis on which their costings were developed, with a view to developing our own cost analysis. Any decision on our ultimate participation would clearly need to bear that cost analysis in mind.

**Parliamentary Scrutiny**

Formal proposals on Prüm will, of course, be subject to the usual domestic Parliamentary scrutiny arrangements and we will be submitting the necessary Explanatory Memoranda in the usual way. They will also be subject to Third Pillar unanimity and consultation provisions.

**Legal Basis**

The legal basis currently suggested for the third pillar aspects of the Draft Council Decision (Annex A) is, Article 30(1)(a) and (b), Article 31(1) (a), Article 32 and Article 34(2)(c), The Legal basis for the first pillar Decision (Annex B) is Article 30(1) (a) and (b), Article 32 and Article 34(2)(c).

2 February 2007

**REVIEW OF THE HAGUE PROGRAMME (11228/06, 11223/06, 11222/06)**

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

Sub-Committee F (Home Affairs) of the House of Lords Committee on the European Union considered this package of Communications at a meeting on 22 November 2006. The three documents are also under scrutiny by Sub-Committee E and I have written to you in relation to the particular issues relevant to institutional and judicial co-operation in criminal matters. We would like to seek additional information on some home affairs aspects of the Communications.

With regard to the Communication on evaluation, we note that you share the Commission’s view about the need for thorough evaluation of measures on justice and home affairs. However, in order to form an overall picture we believe it is necessary to monitor not just implementation of legislation, policies and action plans but also operational action. For instance, operations of agencies such as FRONTEX are subject to very limited scrutiny and accountability, and an independent external evaluation of the Agency has not yet taken place. In previous correspondence, to which we still await a reply (see my letter of 18 October 2006 concerning Document 11880/1/06), we also questioned the fact that this Agency is to be given a broader remit with the RABITs proposal, in the absence of such an evaluation having taken place—an argument that you seemed to endorse. Does the Government agree that operational actions by agencies set up to pursue justice and home affairs policies need to be monitored and subjected to transparent, objective and thorough evaluation? Is the Government still of the view that the proposal to establish RABITs is premature in the absence of an independent evaluation of the work of the European Borders Agency?

In relation to your comments on specific policy areas in the Way Forward Communication, we are very disappointed at the Government’s persistent lack of support for the harmonisation of the collation of Country of Origin information on account of concerns about standards and costs. It is not clear to us why standards should be compromised by this exercise. With regard to your concerns about costs, has any assessment been made of their magnitude, particularly in relation to the cost of running Country of Origin information systems in each Member State?

You have also expressed your support for the Framework Decision on the Principle of Availability and the parallel Data Protection Framework Decision. Could you tell us why there has been such lack of progress on these measures? We were anxious that the Framework Decision on the principle of availability should not be taken forward at the expense of progress on the Data Protection Framework Decision, but the Committee has heard nothing about it since it last examined the proposal in January 2006. We would be grateful if we could receive a detailed progress report on negotiations over this proposal. We would also like to know how both Framework Decisions will be affected by the Prüm Convention, which the upcoming German Presidency allegedly intends to propose to apply to all Member States as an EU measure. We are aware that nothing is said about this Convention in the Way Forward Communication, and we wondered whether this is right given that it is clearly an important development in determining the future direction of Justice and Home Affairs policies.

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4 Refer to "Review of Hague Programme" under Sub-Committee E (Law and Institutions).
The Committee is keeping the documents under scrutiny pending receipt of the information requested.

22 November 2006

SCHENGEN INFORMATION SYSTEM: SECOND GENERATION (SIS II) (5709/06, 5710/06)

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

Sub-Committee F (Home Affairs) of the House of Lords Committee on the European Union considered the revised proposals at a meeting on 13 December 2006.

The Committee is aware that the revised texts were agreed in principle by the Justice and Home Affairs Council on 4–5 December. As you know, we are in the process of completing an inquiry on the second generation Schengen Information System (SIS II) which will seek to make recommendations that would be useful as regards the interpretation and application of the SIS II provisions, including points relevant to the specific position of the UK. We are therefore retaining these documents under scrutiny, but given that our scrutiny will not affect the adoption of the legislative measures, we are happy for a Minister to agree to the proposals being adopted in the Council, in reliance on paragraph 3(b) of the Scrutiny Reserve.

The previous drafts (documents 5709/06 Rev 1, Rev 3, Rev 6, Rev 8 and 5710/06 Rev 2, Rev 4) are cleared from scrutiny as they have been superseded.

14 December 2006

Letter from Joan Ryan MP to the Chairman

During the course of the Committee’s inquiry into the Second Generation Schengen Information System (SIS II) I provided you with information on SISone4all, a technical solution which will allow nine of the new Member States who joined the European Union in May 2004 to connect temporarily to the Schengen Information System I (SIS I+) currently in use by other member states. As you are aware from my letter of 14 December, the December Justice and Home Affairs Council gave the go-ahead for SISone4all to proceed. The UK currently has no intention of joining SISone4all, and we negotiated the terms of the Council Conclusions relating to financing the project so as to exempt the UK from future additional costs associated with implementing SISone4all. This letter updates you on progress on SISone4all and the impact on SIS II, and on two legislative measures which we expect to be adopted shortly at a forthcoming Council.

The December Council Conclusions noted that some delay to SIS II would be caused by the implementation of SISone4all, and invited the European Commission to present by February 2007 a revised timetable for SIS II which takes into account the consequences of the implementation of the SISone4all project.

The Commission presented this revised SIS II schedule in January 2007. The overall impact of the implementation of SISone4all is to push back the SIS II operational date for Member States using the SIS I+ from June 2008 to December 2008. The Government regrets the impact on SIS II, and has consistently underlined the need for rigorous project management of SISone4all to minimise any delays. However, this delay will not impact on our domestic SIS II programme.

The December Council Conclusions also noted that amendments would need to be made to the financial regulation governing the budgetary aspects of SISNET, which is the communication infrastructure for SIS I+. This is necessary to account for the financial implications for all States participating in the SIS I+ so as to cover the extra costs flowing from the extension of the network. A Council Decision which will allow for these amendments to the financial regulation has been drawn up, and a copy is enclosed at Annex A (not printed) (document number 6606/07). We expect this document to be adopted at a forthcoming Council. It should be noted that this document specifically states that the United Kingdom should not contribute to additional costs entailed by the SISone4all project.

The second legislative measure will allow the Deputy Secretary-General of the Council of the European Union to act as representative of the Member States in a tendering process to allow for a new contract to be drawn up for the SISNET. This is necessary as the current contract will end on 13 November 2008, but those member states currently connected to the SIS I+ will now be using the system until migration to SIS II. A copy of this document is attached at Annex B (not printed) (6605/07).

I hope the Committee finds this information useful.

5 March 2007
STRENGTHENING CROSS-BORDER POLICE COOPERATION (6930/05)

Letter from the Chairman to Tony McNulty MP, Minister of State, Home Office

Thank you for your letter of 19 July 2006 which Sub-Committee F (Home Affairs) of the House of Lords Committee on the European Union considered at a meeting on 25 October.

We note that the long drawn out negotiations on this instrument have come to a dead end over the very issues that we had highlighted when we first examined the proposal at a meeting on 26 October 2005. We are astonished that it has taken Member States one year to realise that no convincing case for this proposal could be made.

Given that the proposal has now been dropped, the Committee has decided to clear this document from scrutiny.

25 October 2006

UNIFORM FORMAT FOR RESIDENCE PERMITS FOR THIRD-COUNTRY NATIONALS (7298/06)

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

Thank you for your letter of 11 July 2006 in reply to my letter of 7 June 2006. Sub-Committee F (Home Affairs) of the House of Lords Select Committee on the European Union considered it at a meeting on 25 October.

I have to say that your letter does nothing to allay our concerns about the huge increases in the estimated start-up and running costs. Given that these costs are to be recovered “through charges levied on those who apply for the service”, it is all the more important that they should be fully quantified and justified. We do not understand how the cost estimates “remain subject to departmental approval”, and would be glad if you would clarify whose approval, and in which department, remains to be sought.

The cost increases are said to be justified by three benefits: “the additional benefits [stemming] mainly from the increased assurance that biometrics are uniquely associated with an identity”; “additional features that will help to control fraud and abuse, thereby improving immigration control”; and, under “Compliance with EU legislation”, further “significant benefits in going beyond the requirements of the draft Regulation”—though what these benefits might be, your letter does not disclose.

Attached to your letter is a table showing the basic and incremental benefits of biometric residence permits. We do not understand how this explains or quantifies the cost increases. We would be glad to see a detailed breakdown of the figures which made up the original estimate in 2004, and now make up the revised estimate. If, as you say, an element of the increase is that the estimate is now 10-year average, incorporates a larger contingency element, and is due to a better understanding of the technical specifications, we would like to know how each of these factors contributes to the total increase. We look forward to receiving your reply. In the mean time we are keeping this document under scrutiny.

Additionally, we understand that the Commons European Scrutiny Committee, which shares many of our concerns, has invited you to give oral evidence, and that this evidence session is to take place on 22 November. We look forward to reading a transcript of your evidence.

25 October 2006

Letter from Liam Byrne MP to the Chairman

Thank you for your letter of 25 October 2006, in which you request further details of the costs and benefits of the UK’s biometric residence permit project—It was agreed that I would respond to your letter after my appearance before the House of Commons European Scrutiny Committee.

The questions set out in your letter were considered at the evidence session. In answer to your questions therefore, I would like to reiterate my responses to the Commons European Scrutiny Committee. The revision in costs relate to the decision, as part of the Government’s National Identify Scheme, to go beyond the minimum EU standard for the Biometric Residence Permit (BRP) and incorporate additional features, which include the introduction of a micro-chipped polycarbonate card and a central biometric database to record fingerprints.

The additional benefits achievable by going beyond the minimum EU requirements will enable the Home Office to tie an individual to a single identity which will improve immigration control, prevention in illegal working and fraudulent applications; while improving the ability of genuine applicants to travel to and from the UK.

I have noted the Committee’s request for a detailed breakdown of figures for both the original and revised estimate of costs. I regret that I am not yet able to provide the full costs and benefits at this stage as no decision has been made in terms of assessing the numbers and classes of person who will be affected by these proposals. As we intend capturing groups on an incremental basis the costs and benefits will only become quantifiable as soon as a particular group is identified.

I will be able to provide the Committee with more quantified costs after the National Identity scheme has been agreed later this month.

I apologise for not providing a more satisfactory explanation of the phrase “departmental approval”. We are required to develop a robust business case for the BRP project in accordance with Treasury and Home Office guidelines. The business case requires approval from the Joint Approvals Committee in IND and the Home Office Group Investment Board. This approval is required by governance within IND & Home Office and Office of Government Commerce practice. The process also helps to ensure the project satisfies the approval criteria. These include value for money, affordability, and capacity to deliver the project successfully. No direct approval from the Treasury is required.

Please accept my apologies for not being able to provide the Committee with a more detailed response at this time. I remain committed to providing the Committee with the appropriate information as soon as I am able to do so.

14 December 2006

Letter from the Chairman to Liam Byrne MP

Thank you for your letter of 14 December 2006 in reply to my letter of 25 October. Sub-Committee F (Home Affairs) of the House of Lords Select Committee on the European Union considered it at a meeting on 31 January.

We have read with interest the transcript of the evidence you gave to the Commons European Scrutiny Committee on 6 December 2006. Plainly they share many of our concerns.

We note from your replies to a number of questions, in particular questions 5 to 9, 13 and 26, that the estimates of the costs may well yet change, and that you have yet to identify the benefits which are expected to be derived from those costs. You ended the evidence session by saying:

“But your [Mr Connarty’s] fundamental point about the need of the Government to demonstrate the cost-benefit analysis is absolutely right. That is why my concern has been to get a plan in place first, on which a business case can be developed and a report then submitted to Parliament.”

We look forward to seeing that report. We hope that it will contain a detailed breakdown of these very large costs, so that we can be certain that all of them are fully justified by the benefits to be derived from them. In the mean time we are keeping this document under scrutiny.

In my letter I said that we did not understand how the cost estimates “remain subject to departmental approval”. You explain in your reply that “No direct approval from the Treasury is required.” However in your evidence you say (Q13): “Those business cases then . . . will need to be cleared by the Treasury”. We do not see how these two statements can be reconciled, and would be glad to have an explanation.

In your letter of 14 December you undertook to provide us with “more quantified costs after the National Identity scheme has been agreed later this month”—ie December. We look forward to receiving them.

2 February 2007

Letter from Liam Byrne MP to the Chairman

Thank you for your letter of 2 February.

You asked for clarification around the issue of Treasury approval referring to my letter to you of 14 December 2006 and comments I made during the evidence session on 6 December 2006.

The position stated in my letter is correct. We do not require direct approval from the Treasury as the anticipated set-up costs are within our delegated authority. However, all business cases regardless of whether they fall within delegated limits must comply with Treasury guidelines. This includes the guidance laid down in the Green Book—Appraisal and Evaluation in Central Government. Subject to resource availability, the
Treasury also reserves the right to scrutinise business cases which are deemed to be novel and risky. In retrospect the word “compliance” might have been a better choice than “cleared”, but I hope this is now clear. I note that you are keeping the Regulation under scrutiny until you have received further information relating to the cost/benefit analysis. I will shortly be in a position to let you have this.

27 February 2007

VISA INFORMATION SYSTEM (VIS) (14196/2/06)

Letter from Tony McNulty MP, Minister of State, Home Office to the Chairman

Thank you for your letter of 4 May 2006 referring to the above dossier.

I am writing to provide you with an update on negotiations, which are continuing under the German Presidency with the aim of reaching an agreement by the end of June at the latest.

I have attached a copy of the most recent text to this letter for your information, and I thought it might be helpful to go through the dossier briefly to highlight the minor changes that the proposal has seen, resulting from working group discussions. I have also included articles that have not changed, but in which the UK does have an interest.

**ARTICLE 1**

This article covers the subject matter and scope of the proposal. The UK has maintained its reservation on this article, relating to the use of the words “internal security”. We have proposed using “designated authorities” instead on the grounds that it more clearly allows Member States to decide which of their national bodies should have access. It appears that our proposal is close to being agreed upon.

**ARTICLE 3**

Covering the authorities which will have access to the VIS, this article stipulates no limit to the authorities that will have access, but that they must be designated by each Member State. This will entail the Member State providing a list of those designated authorities to the General Secretariat of the Council and the Commission.

**ARTICLE 4**

This article provides for the designation, at a national level, of the units within the designated authorities that will have access to the VIS.

**ARTICLE 5**

The UK has retained its reservation on this article, as we believe that it should also be applicable to us. In its current form, the UK would not be granted direct access to the VIS. We are pursuing negotiations to have direct access. Article 5 no longer includes photographs as a criterion that can be searched.

**ARTICLE 6**

The UK has retained its reservation on this article, which would provide for indirect access to the VIS. Our reasoning has been that this access would be unworkable and slow and we would prefer direct access.

**ARTICLE 7**

This article provides for access to the VIS by Europol. The UK does not oppose Europol having access to the VIS, but we have retained our reservation on this article on the understanding that the reasoning for providing such access is not consistent with the approach taken towards the UK.

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**HOME AFFAIRS (SUB-COMMITTEE F)**

**ARTICLE 8**

Article 8 covers the data protection rules that will be applied. Recent negotiations have focused on the transmission of data to third countries (Article 8(5)). Negotiations are continuing on this matter, and are expected to be finalised within the coming months.

**ARTICLE 11**

The article concerning an advisory committee has been deleted. This does not pose a problem for the UK.

I hope that this update will prove useful and I am happy to answer any further questions your Committee may have. The Government continues to believe that this proposal is a necessary one with the potential to improve our ability to protect the public and would therefore hope that it can be cleared from scrutiny before the Presidency submits it to the June JHA Council for agreement.

*19 February 2007*

**Letter from the Chairman to Tony McNulty MP**

Thank you for your letter of 19 February in which you comment on a revised text of the proposal (document 14196/2/06). Sub-Committee F (Home Affairs) of the House of Lords Select Committee on the European Union examined the revised proposal at a meeting on 7 March 2007.

The Committee notes that, with the exception of the provisions on data protection, the revised draft does not substantially differ from the original proposal. We are concerned that the EU-level data protection framework which is provided by the Framework Decision under negotiation (DPFD) is being replaced by the Council of Europe framework. The Council of Europe Convention on data protection is binding, but too general to safeguard data protection in the area of law enforcement effectively, while Recommendation R(87)15, although relevant in the law enforcement context, is not binding. This change may have been dictated by pragmatic reasons, ie in order not to delay adoption of this proposal. We do not think, however, that the data protection framework to which this proposal has now reverted is adequate, and we are increasingly concerned about the fate of the DPFD. We are aware that the European Parliament has made the prior entry into force of the DPFD an essential element of the “bridging clause” between this proposal and the draft VIS Regulation. What is the current thinking in the Council with regard to the negotiations on the DPFD? Could you inform us how the Council intends to deal with the bridging clause link to the DPFD in discussions with the European Parliament?

We further note that the revised proposal provides exceptions which would allow for the transfer of data to third parties or international organisations. This was prohibited in the original draft. The revised proposal does currently indicate that data shall only be transferred to third parties that ensure an adequate level of data protection, but there is an option for this requirement to be deleted. Surely, such a requirement would need to be maintained and enforced at EU level. There are currently no EU-wide rules that govern the further transmission of personal data to third parties—a gap that the DPFD is meant to fill. We would be concerned if it were left entirely to the national law of the Member State processing the data to determine whether and when such transfer is allowed. We would be grateful if you could dispel our concerns about this.

Finally, both the UK Information Commissioner and the European Data Protection Supervisor, in their comments on the original proposal, highlighted the lack of provisions on co-operation of national and European data protection authorities, including the involvement of the Europol Joint Supervisory Body. This appears not to have been addressed. How is the harmonised implementation of this Decision to be ensured in the absence of a co-ordinated supervisory approach? And how does the revised proposal ensure that supervision over law enforcement use of the VIS is consistent with the supervision of the “first pillar” VIS, given that it is the same system?

Document 14196/2/06 was not deposited and can therefore not be retained under scrutiny. We will therefore continue to retain under scrutiny the original document 15142/05, pending receipt of the information requested and a further report on the progress of negotiations.

*7 March 2007*
VISAS TO ENTER THE SCHENGEN AREA (11668/06)

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

Sub-Committee F (Home Affairs) of the House of Lords Committee on the European Union examined the proposed Regulation changing the Common Visa List at a meeting on 11 October 2006.

We were surprised by proposals that the EU should add British nationals without the right of abode to the common list of nationals requiring a visa to enter the Schengen states. While it is true that such nationals are not in the same position as British citizens for the purposes of UK and EU law, neither are they in the position of aliens. All hold nationality documentation issued by the UK government and have the right, subject to some limits, to call on the UK government to protect them in certain circumstances. Even if there is no link to the territory of the UK by birth or previous residence, the link to the government of the UK which issues nationality documents, affords nationality status, and has responsibilities towards its “subjects” must be sufficient to distinguish them from aliens, to whom there is no duty of protection owed in international law in the absence of a specific assumption of responsibility.

We are aware that changes in UK law since 2002 have greatly reduced the number of British nationals who will have no claim to be British citizens automatically. Most British nationals and protected persons who have no other nationality or citizenship will have become British citizens with the right of abode in the UK and will thus be British nationals for EU law purposes. Those with another nationality can only become full British citizens by a qualifying period of residence in the UK and the fulfilment of other requirements. Given that we are dealing with a residual category of people, it is not obvious to us what migratory or public policy risks these British subjects might represent to justify inclusion in the common list of nationals requiring a visa. Moreover, we wondered whether these British subjects would require a visa when their sole purpose in entering the Schengen state was to travel in the UK.

The Committee is not holding this document under scrutiny but would be grateful if you could let us know what the Foreign and Commonwealth Office’s views are on this matter and how they differ from the Home Office’s views.

12 October 2006

Letter from Joan Ryan MP to the Chairman

Thank you for your letter of 12 October, in which the Committee asked for further information on this proposal.

The situation concerning this matter has moved on since an Explanatory Memorandum was submitted for scrutiny in August. We have recently approached the Commission with regard to the specific wording on certain British nationals. There have also been developments on the viewpoint of the FCO in this matter.

The Commission’s proposal, we now feel, requires further explicit reference to those British nationals who are exempt from the visa requirement and those who are not. Certain British nationals (who are not British citizens) are deemed to hold the nationality of a Member State by reason of their association with the United Kingdom and, therefore, are “citizens of the Union” under Article 17 of the EC Treaty. As such they have free movement rights within the EU, and it would be inconsistent with their status under the Treaty to include them on the Common Visa List.

The British nationals in question are identified by the “Declaration by the government of the United Kingdom on the definition of the term ‘nationals’” (1982) and also in the judgment of the ECJ in Case C-192/99 Manjit Kaur. The persons identified in the 1982 declaration are:

(a) British citizens;
(b) Persons who are British subjects by virtue of Part IV of the British Nationality Act 1981 and who have the right of abode in the UK and are therefore exempt from UK immigration control;
(c) British Dependent Territories citizens who acquire their citizenship from a connection with Gibraltar.

In addition, the FCO intends to put forward the case for all British Overseas Territories Citizens to be given visa free access to the Schengen area on the basis that each BOTC has a strong link to the UK, in fact stronger than BN(O)s who will be visa exempt under the Commission’s proposal, and also because they, like BN(O)s, are returnable and therefore pose less of an immigration risk. The FCO has not expressed concern over the other categories of British national.
With the above categories in mind, and subject to the BOTC issue, the UK would therefore continue to support the Commission and the Schengen States in their wish to include other categories of British nationals who cannot be considered EU nationals (i.e., British Overseas citizens, British protected persons, and British subjects other than those mentioned above) on the Common Visa List. It must be remembered, however, that we do not participate in the Regulation and therefore have limited influence over any amendments to the list.

It was intended to raise these issues, in the first instance, in the SCIFA meeting held in week commencing 16 October. However, UKREP approached the Commission in the margins and it was decided it would be preferable to put forward our concerns in the next Visa Working Group on 26 October. It is my understanding that this will also be discussed further at the SCIFA meeting on 9 November.

I shall report back to the Select Committee once I have further developments on this matter.

31 October 2006

Letter from the Chairman to Joan Ryan MP

Thank you for your letter of 31 October explaining the current position of the FCO on the Commission’s proposed Regulation changing the Common Visa List. Sub-Committee F (Home Affairs) of the House of Lords Committee on the European Union examined this matter again at a meeting on 22 November 2006.

The FCO seems to have no concerns about some categories of British nationals being made subject to visa requirements. We still have doubts, however, about the legitimacy of discriminating between various categories of British nationals for the purpose of exemption from, or inclusion in, the Schengen visa list. As we explained in our letter of 12 October, we hold the view that under international law the various categories of British nationals, no matter how strong or weak their link to the UK, cannot be treated on a par with aliens, as the UK government owes them a duty of protection. The Committee would be grateful if you could address this point.

We further questioned whether these categories of British nationals being made subject to a visa requirement, i.e., British Overseas Citizens (BOC) and British Subjects and British Protected Persons (BPP), in fact pose an immigration risk. Could you tell us how many British nationals would be affected by the introduction of a Schengen visa requirement, where these British nationals are currently resident, and why it is believed they pose an immigration risk? If they do pose such an immigration risk, this risk is arguably felt more strongly by the UK than by Member States in the Schengen area. British Overseas Citizens, British Subjects, and British Protected Persons who want to come to the UK have visa-free access. Would the government therefore consider bringing its own visa requirements into line with the Schengen visa list in respect of these categories of UK nationals?

22 November 2006

Letter from Joan Ryan MP to the Chairman

Thank you for your letter of 22 November 2006 in which you raised several points arising from a Commission proposal for amending Regulation 539/2001 listing the third countries whose nationals must be in possession of a visa when crossing the external borders of Schengen Member States and those whose nationals are exempt from that requirement.

This matter has progressed since our Explanatory Memorandum last August. I would like to take this opportunity to update the Committee on the outcomes of the two meetings to which I referred in my letter of 31 October 2006, namely the Visa Working Group (VWG) and the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) meeting.

At the VWG meetings of 26 October 2006 and 14 November 2006 it was agreed—after UK intervention—to remove reference to those British Subjects (BS) and British Overseas Territories Citizens (BOTC) with a right to abode in the UK from Annex I thereby removing the obligation for a visa. This proposal was accepted by the SCIFA/Mixed Committee of 9 November 2006 and the Permanent Representatives Committee (COREPER) of 23 November 2006, where agreement was reached on the text of the draft Regulation.

A general approach on the Regulation was taken at the JHA Council of 4/5 December 2006. Committee members will want to be aware that the European Parliament (EP) voted—this is a consultation rather than co-decision matter—on the amendment of Regulation 539/2001 on 14 December 2006, and suggested several amendments; two were rejected—Amendment 1: a reference to when 539/2001 is next considered for review, the visa status of other small island states should be examined and Amendment 4: a reference to special passports was inserted—by the Presidency who assessed the amendments and requested delegations to approve their position by silent written procedure. The Presidency’s assessment was shared by the Commission whose position was confirmed according to internal Commission procedures. The draft
Regulation was submitted to COREPER/Council as an I/A point item on 20 December 2006. The Council Regulation amending Regulation 539/2001 was adopted at the Agriculture/Fisheries Council on 20 December 2006 and was published in the Official Journal on 30 December 2006. Regulation 1932/2006 amending Regulation 539/2001 entered into force on the 19 January.

Turning now to the points you raised; your first point concerned the question of the level of assistance certain British nationals could expect from HM Government. As you pointed out in your letter of 12 October 2006, holders of certain British national passports—with a right of abode in the UK—can rely on assistance from HM Government under certain circumstances. However, those British nationals who do not have a right of abode in the UK are eligible for consular protection and assistance only. HM Government will help British nationals whether or not they normally live in the UK. As the overseas territories are “crown possessions” under British sovereignty, British nationals should contact the local authorities if they are in difficulty in these areas. We provide the same help to BOTCs living or travelling outside the overseas territory as we do to any other British national in difficulty.

On the second point raised, how many British nationals would be affected by the introduction of a Schengen visa requirement, I can confirm that there are about 1.5 million British Overseas Citizens (BOC), 10,000 British Protected Persons (BPP) and 200,000 BSs. This figure includes all those affected by the proposal including those with and without a right of abode in the UK.

With regards to your third point, BOCs, BPPs and BSs passport holders are mostly resident in the Indian sub-continent, Malaysia and East Africa.

Your fourth, fifth and sixth points refer to why BOCs, BPPs and BSs (without a right of abode in the UK) “pose an immigration risk”, their “visa free access” to the UK and the need to align the UK’s visa requirements with the Schengen Member States’ Common Visa List; I will answer the three points together. The three categories of British nationals referred to do not have visa free access to the UK when, for example they are seeking entry for a period exceeding six months or are seeking entry for a purpose for which prior entry clearance is required under the Immigration Rules. Those British nationals who do not have a right of abode in the UK are subject to UK immigration control and to any restrictions endorsed in their passports. With the exception of a few hundred BOTCs who are not British citizens, and some BSs, the Commission’s proposal will mean that Schengen visa requirements for the relevant British nationals will be more closely aligned to the UK’s immigration control. We believe that this is a significant achievement.

In its report of 11 October 2006 (37th report, 2005–06) on this process, the European Scrutiny Committee asked that I provide the views of the FCO on the proposal to require BOCs, certain categories of BSs and BPPs to possess visas for entry into the Schengen area. The FCO has been consulted throughout the process and are content. As these categories are subject to immigration control in the UK it is difficult to argue against similar requirements being put in place by our EU partners. BOCs, certain categories of BSs—primarily those who have a connection with India and Pakistan and BPPs, cannot automatically be returned to their country of origin.

7 February 2007

Letter from the Chairman to Joan Ryan MP

Thank you for your letter of 7 February which Sub-Committee F (Home Affairs) of the House of Lords Select Committee on the European Union examined at a meeting on 7 March 2007.

The Committee is very grateful for your comprehensive reply. We note that in the meantime the Regulation was adopted and has entered into force but would be grateful if you could address one further query on the information you have provided. You very helpfully provide the figure of all British nationals affected by the introduction of a Schengen Visa requirement, whether or not they have a right of abode. Could you give us, in the case of each of the categories involved, the breakdown of those who have a right of abode in the UK, and those who do not?

7 March 2007

Letter from Joan Ryan MP to the Chairman

Thank you for your letter of 7 March in which you requested further details on the numbers of certain categories of British nationals who may be affected by the amendment to the EU Common Visa List, and whether they have the right of abode or not.

The Immigration and Nationality Directorate (IND) does not collect this data. However, it does hold data on grants of right of abode (ie, where an application has been submitted to IND for a certificate of entitlement to the right of abode) relating to categories of British nationals from October 2001 to 18 March 2007. The
figures covering this period are below. These statistics are based on data extracted from management information, are provisional, and are subject to change; they are not National Statistics.

BOTCs number approximately 160,000. These are British nationals by connection with one of the British overseas territories listed in Schedule 6 of the British Nationality Act 1981 (with the exception of those with a connection to the UK Sovereign Base Areas of Akrotiri and Dhekelia (in Cyprus)). A person who was a BOTC immediately before 21 May 2002 became a British citizen automatically on that date under the British Overseas Territories Act 2002. As British citizens, these BOTCs have a right of abode in the UK. The FCO estimates only several hundred BOTCs do not have a right of abode in the UK. There was one grant of right of abode by IND during the period in question.

British Overseas Citizens number approximately 1.5 million and do not have an automatic right of abode in the UK. There were 11 grants of right of abode by IND during the period in question.

British Protected Persons number approximately 10,000 and do not have an automatic right of abode in the UK. There was one grant of right of abode by IND during the period in question.

BSs number approximately 200,000 and may have a right of abode in the UK on the basis of a pre-1983 ancestral or marital connection with the UK (under section 2(1) (b), of the Immigration Act 1971 as amended). Figures indicate there were six grants of right of abode by IND during the period in question. Please note that applications, with supporting evidence, for BS passports are processed separately by the Identity and Passport Service (IPS). BS passports issued by the IPS indicate whether the holder has a right of abode in the UK. IPS does not collect information on the number of documents so marked.

3 April 2007
Social Policy and Consumer Affairs
(Sub-Committee G)

ADULT LEARNING: IT IS NEVER TOO LATE TO LEARN (14600/06)
Letter from the Chairman to Bill Rammell MP, Minister for Life-long Learning,
Further and Higher Education, Department for Education and Skills

Thank you for your Explanatory Memorandum of November. This was considered by Sub-Committee G at its meeting on 11 January.

We share the Government’s view of the importance of adult learning. We also view the Commission Communication as useful as a basis for discussion of means to improve adult learning across the EU and for the development of an action plan to achieve this.

We note that the report by Lord Leitch “Prosperity for all in the Global Economy: World Class Skills”, published on 5 December, has some powerful messages about the desirable future direction of training provision in the UK, including that for adults.

In particular, we see as relevant to the issue of adult learning, the statistics, reported in 5 December 2006 Treasury Press Release that announced Lord Leitch’s report, that 5 million adults in the UK lack functional literacy and that 17 million have difficulty with numbers. While you report in your Explanatory Memorandum that UK participation in adult learning is 29%, it may be that this is not for the most part in the type of learning activities that can help to improve the relatively poor level of low and intermediate skills possessed by many adults in the UK.

We would be grateful therefore if you could let us have some information about how the Government’s input to the development of the Commission’s Action Plan for adult learning is likely to be influenced by the recommendations of the Leitch review.

It would also be helpful if you could let us have some information about how the overall figure of 29% participation in adult training in the UK is made up in terms of participation in different types of training, including those which address low and intermediate skills needs.

Pending our consideration of this further information we will retain this document under scrutiny.

11 January 2007

ADVANCED THERAPY MEDICINAL PRODUCTS (15023/05)
Letter from Andy Burnham MP, Minister of State, Department of Health to the Chairman

I am writing to update you on the negotiations that are taking place in the Council on the European Commission’s proposals for a Regulation on advanced therapy medicinal products.

The committee will be aware that negotiations in the Council commenced in January 2006 under the Austrian Presidency and have continued under the Finnish Presidency. There has been some progress in negotiations on a range of issues. These include, for example, the transitional period. There is broad consensus among Member States that a longer period of around four years would be preferable to the two year period proposed by the Commission. However, there are key issues which are fundamental to the Regulation which have yet to be resolved and we expect to be progressed during the Germany Presidency in the first half of 2007. The two substantive issues which have featured in the negotiations and which are yet to be resolved are the definition of the products to be covered by the proposals including the overlap with the review of the medical devices legislation which is currently under negotiation in the Council and the proposed hospital exemption.

One of the key issues which remains unresolved relates to the definition of products covered by the proposals and the overlap with medical devices legislation. The committee will be aware that the MHRA is leading for the UK on both sets of legislative proposals and the objective remains to achieve a coherent regulatory framework. I have written to you separately about the Medical Devices Directives negotiations. In negotiations, it was proposed that all products containing viable human or animal tissues or cells should be regulated as medicines. Our position is that where a product containing tissues or cells is at the borderline of
the medicines and devices regime, it should be regulated with appropriate health safeguards on the basis of its principal mode of action and intended purpose. This could allow for the possibility of some products being regulated as devices. The position of some Member States is fluid on this issue and there is some support for the UK’s position. There is a fairly strong degree of support in the Council for opening up the medical devices regime to products containing non viable, human tissues or cells. However, there is less support in relation to viable tissues or cells. We continue to pursue our negotiations across the two separate working groups.

The other key issue which remains unresolved relates to the proposed hospital exemption. This has raised a number of complex issues in negotiations. Under the proposal, as drafted, any advanced therapy medicinal product which is both prepared in full and used in a hospital, in accordance with a medical prescription for an individual patient would be exempt from the new regulatory requirements. The committee will be aware that the Government’s position is that some form of exemption is required. However, as drafted, we do not think the exemption is satisfactory. Where the exemption as currently drafted would apply, it is very wide in effect. On the other hand, linking the exemption to a single hospital appears to us overly restrictive given that hospitals are likely to co-operate in this highly specialised area. Ideally, we would like to see an exemption that, while including greater safeguards for patients, was not linked to institutional arrangements but rather to the characteristics of the activity. So far, we have not managed to garner significant support for taking a non institutional approach. Overall, the views of Member States are divergent. Some Member States want to widen the exemption to cover situations where different hospitals work in collaboration. Others want to limit the exemption in the interests of patient safety and of establishing a level playing field between hospitals and industry. There has also been a suggestion that a specific exemption is not needed given that there are provisions in existing European medicines legislation that could have the effect of exempting some activity carried out in hospitals from aspects of medicines regulation. No further discussions on the hospital exemption will take place during the Finnish Presidency.

Given the fundamental issues that have yet to be resolved in relation to the definitions and scope of the proposals we are not yet in a position to revise the initial regulatory impact assessment. The MHRA has continued to meet with interested parties, including industry, hospital and academic research interests, during the negotiations to brief them on progress and to seek their views on emerging issues.

The committee asked about the Government’s position on the proposed legal base for the Regulation and will be aware that our preliminary view is that we are now unlikely to have any convincing arguments on legal base and may have to accept that article 95 is appropriate in the case. We will confirm our formal position on this in due course.

The committee may also be interested to know that the European Parliament’s Environment and Public Health (ENVI) Committee voted on the rapporteur’s draft report in September 2006. The committee voted against adopting the report (33 votes against, 24 in favour and 1 abstention). Our understanding is that there was resistance to the strong position on ethical issues taken by the rapporteur. The rapporteur has drafted a new report which will be considered by the ENVII committee in January 2007. There are no amendments related to ethical issues in the revised draft report we have seen. The European Parliament is expected to vote in plenary on the proposals in February/March 2007.

A progress report on the discussions that have taken place to date was presented to the Health Council on 30 November. The report highlighted the state of play in negotiations on the key issues. I would be pleased to keep the committee informed of significant developments in negotiations during the German Presidency.

19 December 2006

Letter from the Chairman to Andy Burnham MP

Thank you for your letter of 19 December 2006 which explained the latest position on negotiations relating to the proposed Regulation. This was considered by Sub-Committee G on 18 January.

In view of the implications for patient safety and the public interest generally, we have a particular concern about the suggested form of the exemption from the Regulation. We find persuasive your arguments that an exemption should depend upon the characteristics of a tissue engineering activity, rather than on the specific institution where the activity is carried out. We encourage you to pursue this issue in future negotiations.

We note your point that, because a number of fundamental issues with the proposed Regulation have yet to be resolved, it has not been possible to produce a revised regulatory impact assessment (RIA).

You suggest that you may have to accept that Article 95 is an appropriate legal base for the Regulation, but that you will confirm the Government’s position on this.
We look forward to hearing from you on the outcome of current negotiations, to receiving a revised RIA when this can be produced, and to your confirmation of your position on the legal base. In the meantime we will retain the proposed Regulation under scrutiny.

19 January 2007

Letter from Lord Hunt of Kings Heath, Minister of State, Department of Health to the Chairman

I am writing to update you on recent progress in the negotiations that are taking place in the Council on the European Commission’s proposals for a Regulation on advanced therapy medicinal products.

Progress was made under the Finnish Presidency in the second half of 2006 on a range of issues. The current German Presidency has given priority to this dossier and there has been a significant increase in momentum in recent weeks. In Andy Burnham’s letter of 19 December, he mentioned that there were two substantive issues which had yet to be resolved; the proposed hospital exemption and the scope of the Regulation/overlap with the scope of the medical devices legislation (also currently under negotiation in the Council). In recent weeks, the current Presidency has brought forward proposals which seek to bring those two contentious issues to a head.

The committee may also be interested to know that the European Parliament’s Environment and Public Health (ENVI) Committee voted on the rapporteur’s draft report on 30 January 2007. There were no amendments related to ethical issues voted through by the ENVI Committee. The European Parliament is expected to vote in plenary on the proposals on 13–14 March 2007. However, it is possible that the plenary vote may be postponed depending on the level of progress made in discussions between the Council, the European Parliament and the European Commission.

The proposed hospital exemption has raised a number of complex issues in the negotiations. Under the Commission’s original proposal, any advanced therapy medicinal product which is both prepared in full and used in the same hospital, in accordance with a medical prescription for an individual patient would be exempt from the new regulatory requirements. The committee will be aware that the Government had serious concerns about the original text. Our fundamental concern was about linking the exemption to a single hospital. This approach seemed overly restrictive given the evidence that hospitals may wish to collaborate in this highly specialised area. In negotiations we have made the case for an exemption which would include greater safeguards for patients but was not linked to specific institutional arrangements. Under the latest proposal put forward by the Presidency (this was based on one of the amendments put forward in the European Parliament), the exemption would relate more to the nature of the activity carried out as opposed to the institution where the product was made. There would be quality requirements, yet to be specified but likely to include compliance with good manufacturing practice (GMP). It is not yet clear whether the majority of Member States will support the current proposal given the views of Member States have hitherto been divergent on this issue. From our perspective, this approach would provide a positive basis from which to move forward though the text would need to be modified.

The other key substantive issue which remains unresolved relates to the scope of the proposed Regulation and the overlap with medical devices legislation. The committee will be aware that we have advocated in negotiations that where a product containing tissues or cells is at the borderline of the medicines and devices regime, it should be regulated with appropriate health safeguards on the basis of its principal mode of action. This approach could allow for the possibility of some products being regulated as devices. Although there has been some support for our position, the majority of Member States and the European Commission have all taken the view that where products contain viable tissues or cells, they should be regulated as advanced therapy medicinal products. The ENVI Committee recently voted through amendments consistent with this approach. On the other hand, there is, however, a fairly strong degree of support in the Council for opening up the medical devices regime to products containing non viable human tissues and cells, in which case such products would be classified either as medicines or as devices according to the principal mode of action. This would bridge a significant regulatory gap. We will press for this to be addressed in the negotiations. It now seems likely that this approach may form the basis for reaching a compromise on this important issue.

Given the fundamental issues that have yet to be resolved in relation to the definitions and scope of the proposals it has not yet been possible to revise the initial regulatory impact assessment. Moreover, the current scale of activity in this area is relatively small and developmental in nature so it has proved difficult to date to gauge the likely regulatory impact on those involved in tissue engineering. The proposed Regulation would
not change the definition of a medicinal product and so the main effect of the Regulation for products affected would be to modify the normal requirements of the medicines regulatory regime to put in place more tailored requirements reflecting the nature of the product. This also makes any quantification problematic.

The MHRA has continued to meet with interested parties, including industry, hospital and academic research interests, during the negotiations to brief them on progress and to seek their views on emerging issues. We know from our discussions with stakeholders that some operators total output of products/procedures on an annual basis does not exceed double figures. Under the proposals, the Commission would publish a general report on the application of the Regulation within five years of its entry into force. This would include comprehensive information about the different types of advanced therapy products authorised under the Regulation. The report would also assess the impact of technical progress on the application of the Regulation.

The committee asked about the Government’s position on the proposed legal base. In relation to the proposed legal base for the Regulation, the Government has now reached a formal position. We accept that the proposals for a centralized procedure relating to advanced therapy products and for the establishment of a new Committee for Advanced Therapies will improve the conditions for the functioning of the internal market and lead to further harmonization in the field of medicinal products. Having regard to the judgments of the European Court of Justice in Case C-66/04 UK v Parliament and the Council (“the smoke flavourings case”) and Case C-217/04 UK v Parliament and the Council (“the ENISA case”), therefore, we now accept that Article 95 is the appropriate legal base for this measure.

12 March 2007

Letter from the Chairman to Lord Hunt of Kings Heath

Thank you for your letter of 12 March providing an update on negotiations relating to this document during the German Presidency. This was discussed by Sub-Committee G (Social Policy and Consumer Affairs) at their meeting on 29 March.

As I noted in my letter of 19 January, we have sympathy with the Government’s view that any exemption from the Regulation would much more appropriately be based upon the nature of the activity in question rather than upon the institution where it was carried. We therefore welcome the news that the European Parliament suggested an amendment to the proposed Regulation to introduce this approach, and that the Presidency has put this forward in the latest text of the draft Regulation.

We note that the Government now accepts that Treaty Article 95 does provide an appropriate legal base for the proposed Regulation. We note also that further issues need to be clarified before a revised Regulatory Impact Assessment (RIA) can be produced. However, although it may be difficult to produce this for the reasons you advance, we do emphasise that to do so is an essential piece of work. Even if it is possible to make only inexact estimates of impact, these should be compiled systematically in an RIA together with information about the limitations of the analysis. Please would you send us a copy of the revised RIA when this has been completed.

We are encouraged that the German Presidency has indicated that a first reading agreement is now possible on this dossier and we ask you to continue to keep us informed about progress. In the meantime we clear this document from scrutiny.

29 March 2007

BEFTER TRAINING FOR SAFER FOOD (13371/06)

Letter from the Chairman to Caroline Flint MP, Minister of State for Public Health, Department of Health

At its meeting of 30 November 2006, Sub Committee G considered the above documents and your accompanying Explanatory Memorandum dated October 2006.

We support the principle of a Community Strategy on Training in this field as long as it is appropriately justified. In terms of the methodology chosen, we have some concerns that the Commission appears to be focusing on the executive agency option and would agree that this requires further justification, in addition to some more information on the costs and benefits of the other options.
Since our scrutiny of the Commission’s proposed options for a training strategy for feed and food law, animal health, animal welfare and plant health law will depend to some degree on what are the current arrangements for such training in the UK, please would you send us a summary of those UK arrangements.

The possibility of establishing an executive agency would appear to rest on whether the training strategy can be defined as a “Programme” within the meaning of Regulation 58/2003. We would be grateful if you could provide use with your views on this matter and whether you are aware if the European Parliament and/or other Member States will express reservations at this stage regarding the proposal for an executive agency.

We will retain the Strategy under scrutiny, pending your views on the above points and in the light of further information from the Commission once any additional cost-benefit analysis has been undertaken.

6 December 2006

Letter from Caroline Flint MP to the Chairman

I refer to your letter of 6 December 2006 concerning the above Commission Communication, which was considered at the meeting of Sub Committee G on 30 November 2006. You indicated that you would retain this under scrutiny pending my views on a number of points and until further information is available from the Commission. These points are addressed below. In doing so, I have taken account of some additional information provided by the Commission at the end of 2006 when, under the auspices of the Finnish Presidency, it presented its Communication at Chief Veterinary Officer and Expert Group level.

CURRENT ARRANGEMENTS FOR TRAINING OF OFFICIAL CONTROL STAFF IN THE UK

The Committee has asked for a summary of current arrangements in the UK for training staff undertaking official controls. This is appended (not printed) and I hope that it is helpful in informing the Committee’s consideration of the Commission proposal.

MANAGEMENT AND OPERATION OF FUTURE “BETTER TRAINING FOR SAFER FOOD” PROGRAMMES

The Committee has also asked about whether the “Better Training for Safer Food” strategy may be considered as a “programme” within the context of Council Regulation 58/2003. The training programmes and courses under the strategy constitute activities that the Commission has budgetary authorisation to implement (see below), and the aim is to promote a more consistent approach to official controls by the staff of the competent authorities in the different Member States (thereby safeguarding public health and consumer interests). In light of this, I believe that the Commission is justified in proposing that an executive agency be responsible for organising and operating future programmes and courses under the strategy.

The Commission’s favoured option is to extend the mandate of its Executive Agency for the Public Health Programme but it has been made clear that no decision has yet been taken. The Commission appears to now accept that the proposed cost-benefit analysis should examine not just the favoured option but also at least some of the other options identified in its Communication. The intention is to commission and conduct the cost-benefit analysis during the early part of 2007. The chosen option is not expected to be in place before early 2008.

TRAINING PRIORITIES

As regards training priorities, the Commission has confirmed that it intends to develop a robust mechanism for consultation with the Member States such that these may be agreed and in order to make sure that the programmes under the training strategy complement rather than duplicate those at national level. This is welcomed and the UK will participate fully in such consultations.

PLANT HEALTH

Although plant health is not covered by the same legal basis as feed and food and animal health and welfare, the Commission believes that it should be included within the scope of the training strategy as the aim of more consistent controls across the EU is just as relevant in this sector. As before, we are not opposed in principle to this but will continue to press for consultation through the Standing Committee on Plant Health.

**Financial Implications**

As regards funding of the annual “Better Training for Safer Food” programmes, the Commission confirmed that this has already been taken into account within the Community budget agreed for the period to 2013 and that there will be no transfer of funds from other budget lines. As regards the costs for establishing an executive agency to organise and manage the programmes in the future, estimates will be clearer when the cost-benefit analysis is complete.

**Council and European Parliament Consideration**

As the Communication is for information only and political agreement to the Commission’s plans is not required (as it already has powers to establish executive agencies in order to implement Community programmes), the Finnish Presidency did not take it to the Council (and the German Presidency is not expected to either). At Chief Veterinary Officer and Expert Group level, the Member States were, in general, supportive of “Better Training for Safer Food” but, like the UK, wished to be kept abreast of developments as regards the cost-benefit analysis for the organisation and operation of future programmes under this strategy. The Commission agreed to this and a progress report is expected in February 2007 with a final report when the work is completed.

The Communication was also sent to the European Parliament but discussion of it is not expected.

17 January 2007

**Letter from the Chairman to Caroline Flint MP**

Thank you for your letter of 17 January. This was considered by Sub-Committee G on 8 February.

The information you provide is helpful and answers most of the questions I raised in my previous letter of 6 December 2006. In particular, we note your view that the Commission’s proposal—to establish an executive agency to organise and manage the planned training programme—is justified under the terms of Council Regulation 58/2003. We note also your view that the Commission already has the power to establish such an executive agency, and that it will not need to seek political agreement in Council for this.

We see it as most important that the Commission’s cost-benefit analysis of the case for an executive agency, and of alternative options, is completed satisfactorily and that the costs it reveals are proportionate. We encourage you to give careful attention to this analysis.

We are content to clear this information item from scrutiny and request that you keep us informed about the results of the cost benefit analysis.

8 February 2007

**CITIZENS FOR EUROPE (8154/05)**

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

Thank you for your letter dated 29 September 20062 which was considered by Sub-Committee G on 26 October.

We note that a Common Position was adopted at the Competitiveness Council on 25 September and that final adoption is expected this month, following approval by the European Parliament.

We also note that you abstained from voting in favour of the Proposal when political agreement was reached at the Education, Youth and Culture Council meeting on 18 May and again when a Common Position was adopted at the Council on 25 September. Abstention was clearly the proper course at both Council meetings, since the scrutiny reserve continued to apply. But we are very concerned about your failure to notify us that political agreement was expected to be considered at the May Council.

We accept that the sudden and unexpected decision of the Finnish Presidency to press for a Common Position at the September Competitiveness Council put you in a difficult position. But we are very surprised by the statement in your letter that your officials were unable to contact the Clerk on 21 and 22 September. Our office was staffed on both these days. In addition your officials may wish to be reminded that our officials can always be contacted in emergency during Recesses through the House of Lords Duty Clerk (020 7219 3000).

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While we welcome your apology, I must say that we find the Department’s failure to reply to my letter dated 28 June 2005\(^3\) for over 15 months quite unacceptable, especially since several reminders were sent to your officials during that time about the need to report progress to the Committee. We are therefore glad to know that you have asked your officials to review their procedures for dealing with scrutiny correspondence and hope that this review will lead to a marked improvement in the standards of efficiency and courtesy which the Committee should be entitled to expect. Our officials stand ready to assist and advise yours during this review.

On the substance, you say that you continued to press for the Commission’s interim evaluation which was originally requested in my letter to you dated 28 June 2005 and that it is now apparently expected “very shortly”. We are very disturbed that the Commission should have failed to produce the requested evaluation after all this time and are bound to wonder how hard the Government have been pressing them for it.

You will see from my letter dated 28 June 2005 to your Secretary of State this evaluation was requested because the Commission had failed to justify the proposed doubling of the annual expenditure. Yet we see from your letter that the Government apparently believes that the Programme is beneficial. We find it difficult to understand to see how the Government has been able to reach that conclusion in the absence of the evaluation.

Your letter adds that you and your officials will continue to address the concerns which we have raised. But we question how much scope you might have to do so now that the Common Position has been adopted and the budget has presumably been approved. This seems to fall far short of the robust approach which my letter of 28 June 2005 urged the Government to take in Council negotiations with the aim of securing more clearly articulated and imaginative proposals than the Commission had given and a convincing analysis of the likely impact of those proposals.

My letter also asked the Government to ensure that the proposed activities avoided duplication of effort and action at Community level which could be taken more appropriately or effective at more local level. Your letter fails to address that request.

We are also surprised and disappointed that your letter makes no reference whatsoever to the concerns about the proposed legal base which were raised in my letter dated 28 June 2005. It is deeply unsatisfactory that the Proposal should have been adopted while that important question apparently remains unanswered.

We will continue to hold the document under scrutiny and will expect you to report as soon as possible on whether the Proposal has now been adopted by Council and whether the promised evaluation has been received. If so, we will expect to see the Department’s assessment of that evaluation without delay. We will also want to have a full and satisfactory answer to all the other points raised above and in my letter dated 28 June 2005. Given our doubts about the programme, we will also want to know how the Government intends to monitor its effectiveness.

30 October 2006

**Letter from Shaun Woodward MP to the Chairman**

The Commission have now informally provided a copy of their external evaluation of the active European citizenship programme (2004–06). We are now in a position to respond fully to all your Committee’s concerns.

**Evaluation of the “Active European Citizenship” Programme**

The final report on the evaluation of the Community action programme to promote active European citizenship is largely positive about the programme. The evaluation has found there is a strong need for the Active Citizenship programme and makes several recommendations for the improvement of future programmes many of which have already been implemented.

The report recommends an increase to the total budget to bring it more in line with the wide remit of the programme. There has been an increase in the budget for the new *Europe for Citizens* programme which is in line with the recommendations of the evaluation and also reflects the even wider scope of the new programme. However, the agreed budget is €215 million for the period 2007–13. This is less than the Commission’s earlier proposals and, along with the redirecting of resources to Action 1, was welcomed by the UK.

The evaluation also recommends the fostering of links with national programmes, through improving contacts with national bodies. This will help to avoid a duplication of action at Community level which could be more appropriately taken at local level.

A copy of the Executive Summary of the evaluation, including the recommendations made, is enclosed for ease of reference. A copy of the full evaluation has been forwarded to the Clerk of your Committee.

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Although the UK continued to raise the importance of evaluation, the Commission were unable to consider an evaluation of the former programme prior to the negotiations for a replacement programme due to the timescales involved.

The Commission issued a public open tender for the evaluation of the active European citizenship programme which was awarded towards the end of 2005. This meant that the evaluation report was not completed until late in 2006 and was made available to the department just before the Christmas period.

An increase in provision for evaluation and the inclusion of SMART targets in the preamble of the programme has been incorporated into the new Europe for Citizens programme in line with suggestions made by the UK following the Scrutiny Committees’ comments.

The Government considers that the new programme respects the principle of subsidiarity. The programme will complement activities carried out at national level, but will achieve goals which the Government does not consider could be achieved effectively at national level; the programme must by its nature be operated at a pan-European level.

LEGAL BASE

The Commission proposed that the Decision for the new programme be based on a dual legal base: Article 151 regarding culture, and the residual legal base provided by Article 308.

Regarding the use of Article 151, the Government considered it clear that this was an appropriate base to empower the Community to pursue such objectives of the programme as bringing people from different European communities together to share and exchange experiences, and promoting and celebrating Europe’s values and achievements.

The Commission considered that there were elements of the programme which did not fall within the cultural aims of Article 151, being those which came under the objective of fostering action, debate and reflection related to European citizenship through cooperation between civil society organisations, to be attained through various actions for supporting civil society and encouraging citizens’ participation in public life and in decision-making. The Commission proposed Article 308 as being necessary to cover these elements of the programme, as it considered that no other specific Treaty provision conferred powers on the EC institutions to act in pursuant of these aims.

The Government accepted that Article 151 was not adequate to cover these elements, and accepted that no other specific Treaty article was adequate to provide an alternative base. The Government had considered whether a base might be found in Part 3 of the Treaty on citizenship of the Union (Articles 17 to 22), but considered that none of these Articles provided powers for the Community to take actions as proposed in the programme for the promotion and support of civil society. In regard to the use of Article 308, the Government considers that the phrase “to attain, in the course of the common market, one of the objectives of the Community” does not require that every proposal using it as its legal base should relate, in a narrowly understood sense, the operation of the common market. The Government considered that the use of Article 308 was justified. The Government took the view that the civic participation aspects of the programme went to obtaining various Community objectives laid out in Articles 2 and 3 of the Treaty, such as solidarity amongst Member States and the strengthening of economic and social cohesion. The Government considered that the proposed programme was necessary in order to obtain these objectives, through actions designed to encourage EU nationals to understand, appreciate and benefit from their citizenship of the Union.

Some Member States had expressed concern about whether Articles 151 and 308 were compatible. The question was discussed in detail at the Council Working Group meetings during the UK Presidency and Member States reached a consensus that Articles 151 and 308 would be used.

The Government accepted that, since the procedures under both Articles 151 and 308 required the Council to act unanimously, the Articles could be combined to form a joint legal base. The proposal required a Decision of both the Parliament and the Council acting in accordance with the procedure laid down in Article 251 of the Treaty. Article 151 requires that the Council act unanimously throughout the Article 251 procedure. Article 308 also requires that the Council act unanimously. Accordingly, the Government considered that the two procedures required under the two bases were compatible; ie, co-decision on the basis of unanimity in both the Council and the Parliament.
REGULATORY IMPACT ASSESSMENT

In our Explanatory Memorandum dated 8 June 2005, we stated that a Regulatory Impact Assessment would be to follow if an assessment was required. Following advice from Cabinet Office officials, DCMS considered whether this proposal would necessitate an RIA. As the proposal does not impose new burdens on business, charities or the voluntary sector, an RIA was not necessary on this occasion.

UPDATE ON THE CURRENT POSITION OF THE EUROPE FOR CITIZENS PROGRAMME

In my letter of 29 September 2006, I informed the Committee that the Council adopted its common position at the Competitiveness Council on 25 September. The European Parliament second reading took place on 25 October 2006. The Commission accepted the four amendments proposed by the European Parliament. A number of informal contacts took place between the Council, the European Parliament and the Commission in order to reach an agreement on the dossier. The amendments adopted correspond to what was agreed between the three institutions.

The first amendment introduces the word tolerance in addition to enhancing mutual understanding between European citizens respecting and promoting cultural and linguistic diversity, while contributing to intercultural dialogue.

The second amendment reduces the number of days between the publication of the Decision in the Official Journal and its entry into force, from twenty to just one, which has speeded up the implementation of the programme.

Finally, the third and fourth amendments involved a reallocation of 2% of the total budget from Action 1 (citizens projects) to Action 2 (projects initiated by civil society organisations).

The UK supported these amendments. The proposal was adopted on 11 December 2006 and the programme was implemented on 1 January 2007.

I apologise again for the gross delay in updating your Committee on this proposal. This was due to the department’s Scrutiny Coordinator post being vacant for a period of five months at the beginning of 2006. Unfortunately this led to the scrutiny reservation being overlooked by officials. It was certainly not the intention of the department to appear discourteous to you and your Committee. Following an internal review by officials, systems have now been put in to place to ensure that this does not happen in the future.

I hope this information will allow you to complete your consideration of this proposal.

30 January 2007

Annex A

EXECUTIVE SUMMARY

THE COMMUNITY ACTION PROGRAMME TO PROMOTE ACTIVE EUROPEAN CITIZENSHIP

The Community action programme to promote active European citizenship (civic participation) was established by the Council in January 2004, for a period of three years ending in December 2006. The overarching aims of the programme were to reinforce an open dialogue with civil society on the principles of transparency and democratic control and to intensify links between citizens of different countries.

The programme had a budget of €80 million and a specific remit to co-fund, through an operating grant, organisations pursuing an aim of general European interest in the field of active European Citizenship (organisations promoting European ideas and debate and organisations and “think tanks” promoting European values and objectives) and actions initiated by civil society organizations (actions by nongovernmental organisations, associations and federations of European interest or cross-industry trade unions and town twinning projects). In total over 30 organisations received an operating grant, whereas around 250 NGOs, associations and federations and trade union projects received funding between 2004 and 2005. Over 2,800 town twinning projects received funding during the same period.

PURPOSE OF THE EVALUATION

The overall and objectives of this ex-post evaluation were:

1. To evaluate the impact of the activities carried out under the Community action programme to promote active European citizenship (civic participation) and;
2. To learn lessons for the implementation of the future “Europe for Citizens” programme (2007–13). The specific objective was to provide an external, independent evaluation of the current (2004–06) programme, with a focus on projects/activities launched in 2004 and 2005. The evaluation focused in particular on the relevance, effectiveness and efficiency of the programme and its coherence with other interventions supporting the development of European citizenship and civil society.

To fulfil these aims the evaluation employed desk-based research, an online survey of programme beneficiaries under its different strands, 54 in-depth interviews with beneficiaries and Commission staff and seven case-studies to illustrate good practice.

This executive summary presents the main findings and recommendations of the evaluation.

**MAIN FINDINGS**

The evaluation found that there is a strong need for the Active Citizenship programme. Increasing concerns about the distance between the EU and its citizens and a growing perception of a “democratic deficit” have led the European institutions to increase the emphasis to be place on “civic dialogue”. Moreover, the specific programme objectives and activities of the programme are in general coherent with its overall objectives and the policy context. The internal coherence between the different strands of the programme is still to be improved since the programme only recently brought together different budgetary lines under one single unit.

Yet, this has already proved a positive step that has increased the coherence between these previously different budgetary lines and provided horizontal priorities across them. A second point for improvement under the programme is the weak coherence between the modest programme budget and the breadth of its stated aims; whilst the remit of the programme is challenging and very wide, its resources are in comparison limited. This puts the programme under risk of having a large gap between its aims and what it can actually deliver.

The programme has a wide range of target groups but they were clearly defined. In terms of the coherence of the programme design with the policy environment, NGOs expressed the view that partnerships between old and new Member States should be encouraged further.

With regards to the complementarity and synergies between Active Citizenship and other European programmes (such as Youth or Socrates) the evaluation revealed a good degree of complementarity, although links between programmes need to be developed, as it also happens with the few national programmes identified in the area of European Active Citizenship.

Each objective of the programme was addressed by a large number of beneficiaries reflecting a good balance in terms of the interest of projects. Achievement of the different programme objectives, however, was found to vary by strand of activity. Most beneficiaries reported being successful in intensifying links with citizens and promoting the values of the EU. Fewer beneficiaries reported success in stimulating initiatives by bodies engaged in the promotion of active citizenship, bringing citizens closer to the EU and involving citizens in reflections and discussion about the construction of the EU. Bottom-up approaches, therefore, in which citizens from different countries are brought together, seem to have worked better than top-down approaches that try to link citizens directly with European institutions, although this conclusion is based mainly on the views of town twinning projects which made up the largest group of programme beneficiaries and survey respondents.

The activities undertaken to try to deliver the programme objectives were very diverse. They included exchanges between towns, families and schools, the organisation of debates and capacity building activities, organisation of events, such as congresses, fairs or seminars, production of learning and promotion materials, publication of books and audiovisual materials, as well as design and maintenance of websites, amongst others. This flexibility of the programme and the considerable freedom it allowed in selecting the core activities for delivery as well as the diversity of target groups it addressed were key features of the programme that were reported to bring benefits to its beneficiaries. Some beneficiaries felt that other activities could have usefully been included in the programme, including more exploitation of mass-media and media tools as means of reaching citizens. Other beneficiaries advocated a higher cross-sectoral approach to projects, whereby civil society organisations would work with other institutions, such as local authorities and businesses, in order to become more effective and achieve greater impacts. In these respects, the challenge now faced by the programme is the need to maintain its flexible character whilst at the same time ensuring the continuity of the core range of activities undertaken within its framework during its first three years.

The main results derived from the activities and outputs presented above included tangible products (such as publications), methodological learning, experiences and knowledge, policy lessons and legislative changes and greater European cooperation and awareness raising about citizenship issues and other cultures. The programme also obtained important results in terms of capacity building for its beneficiaries.
Although there are some caveats in the information available on impact, it is nonetheless possible to highlight some strong impacts achieved through programme activities. These have included legislative changes and better understanding of EU debates by citizens in the areas covered by the programme, and the development of new activities in these areas, consolidation or creation of networks, improved access to institutions/development of civic dialogue, greater organisational visibility and beneficiary empowerment. In addition to the impact on direct beneficiaries the programme has had an impact on indirect beneficiaries (eg individuals and organisations that have not received funding from the EU) and structures (eg through legislative changes).

In terms of the efficiency of the management of the programme, given its small size and budget, the programme was managed by the European Commission. Overall, beneficiaries were satisfied with the management of the programme. The main points for improvement in respect to the implementation of projects and project support refer to some noted delays in the payment of money from the Commission and a relative lack in terms of feedback on the degree of satisfaction of the Commission on the quality of outputs produced, lack of support to find partners and a need for more information, advice and guidance on the operations of the programme. Many of these problems are already being addressed by the Commission.

In relation to the size of the grant received by projects, the majority of beneficiaries felt that the limits to grant levels had been established at an appropriate level, across all types of activity. The tension is always present between financing either a relatively large number of small projects but in large amounts or a lower number of larger projects. Small projects such as those financed by the programme were often closer to the citizen and provided very tangible outputs and outcomes for those involved, and also gave the opportunity for more organisations to get involved, aspects that are highly valued by beneficiaries of the programme. Yet, for the programme to have visibility at European level and improve its impact, larger projects may be needed.

In terms of dissemination, this took the form of events, publications, links with policy-makers, websites, leaflets, brochures and posters, press releases and media coverage. The European Commission did not undertake many activities for the promotion of the call for proposals. An example of these activities was the distribution of information through national associations of local authorities in Member States about town twinning projects. The main tool for promotion of the programme is a dedicated programme website although, at the time of the evaluation, many of the links provided in it were not functional, which is detrimental to the image of the programme and to its dissemination. The evaluation found significant differences between the organisations in terms of their dissemination and exploitation potential. Some organisations participating in the programme were predominantly focused on dissemination of European values and information through visits and educational activities, whereas others have a very high exploitation potential, both at EU and local levels because of the representation of their members in European institutions or specifically targeted services towards their members. Examples of exploitation of the results of the activities of the organisations receiving Active Citizenship operating grant funding included: using the policy research produced through the programme in consultations and in the design of new policies or in improving existing ones and the development of training and capacity building.

In relation to the added value of programme activities, this concerned mainly the “European” dimension of the activities funded by the programme and the possibility for direct involvement of European citizens, regardless of their background. EU funding and being supported by Commission grants is reported by beneficiaries to have contributed greatly to increasing the credibility and visibility of their activities. Only one in five beneficiaries reported that they could have obtained financing elsewhere for their activities and declared that this would have resulted in lost advantages in terms of nature/coverage of their activities.

Several aspects in relation to sustainability were explored during the evaluation. In relation to partnerships that operated within the programme, many of these intend to continue to work together, in particular those led by organisations funded through an operating grant. With regards to the sustainability of activities beyond the Active Citizenship funding period, slightly under half the respondents have planned to continue their work through EU funding; many organisations preferred to integrate their Active Citizenship projects within the wider work of their organisations to deliver the activity later on a self-funded basis, or are looking for alternative funding sources from the European Commission. Finally, in relation to sustainability in the use of results, this has been greatest in relation to the use of results within the programme beneficiaries (eg use of own products/results) than outside participating organisations. Around two thirds of respondents to the evaluation survey reported that they were using or planned to continue using the results they had produced through their involvement in the programme in their organisation. By contrast, only around a quarter of respondents expected that their results will continue to be used by other organisations.
RECOMMENDATIONS

Following on from the conclusions presented in the previous chapter, the evaluator provided 31 recommendations in relation to the main topics covered in the evaluation, including that:

Relevance

— When designing the aims and objectives of the new programme, the Commission continues to pay particular attention to the direct involvement of citizens in the design of the new programme.
— In the new programming period a greater focus on partnerships and cross-sectoral perspectives that bring together civil society, policy-makers and businesses is explored.

Coherence and complementarity

— The Commission promotes synergies and networking between the various strands of activities and different types of organisations funded through the programme, in particular using ICT, to enhance their impact and strengthen the European dimension of projects, for instance through virtual communities or partnership networks.
— The introduction of new approaches to “bring citizens closer to the EU” through alternative activities to those currently in operation in the programme be explored.
— Partnerships between new and old Member States be actively encouraged for NGO projects.
— The introduction of greater time-scales for the delivery of trade union projects be explored to enhance the quality of their outcomes.
— Further links between European programmes in the area of active citizenship are developed, in terms of awareness of other programmes and use of their outputs.
— Links with national programmes in the area of active citizenship are fostered, through improving contacts with national bodies responsible for civic participation.

Effectiveness

— The total budget of the programme be increased to bring it more in line with its remit or that conversely, the remit of the programme be narrowed.
— The use of external assessors of proposals is maintained and applied to all the strands of the programmes to ensure impartiality and that these are appropriately supported and guided by the Commission to minimise the effect of individual interpretations.
— Financial forms are made available in Excel format for easier completion and other procedures for the simplification of administrative procedures are adopted.
— Further information is provided in relation to the process of selection in terms of selection criteria and feedback on how applications ranked against them.
— The possibility of incorporating some of factors identified in this report as capable of maximising projects’ impact (eg whether there have been previous consultations with stakeholder prior to the submission of applications) as selection criteria for projects is explored.
— In order to ensure a balanced geographical distribution, weaker applications might be accept from some countries, provided they are given support to improve their project.
— The possibility of putting in place a personalised point of continuous support at the Commission/Executive Agency for projects throughout their lifetime is explored.
— The focus on output quality of the programme is enhanced, and that more resources are devoted to this task, including the consideration of onsite monitoring visits to selected projects.
— The possibility of creating a centralised management system of information regarding potential partners for “partner matching” is explored.
— The Commission studies the possibility of introducing structured templates for project reports. This will facilitate the analysis of outputs produced through the programme, which is a gap in the monitoring of the programme so far.
— A programme logo is introduced that could be included on the outputs funded through the programme, and that projects are required in their application to include visibility actions through the use of media.

— The dissemination of results from projects is enhanced, for instance through the creation of an online repository and the production of case-studies and good practice guides. This will also enhance mutual learning and programme efficiency.

**Efficiency**

— The Commission studies some reallocation in the programme budget between town twinning projects and other actions and activities in the programme, and/or develops more structured activities with stronger multiplier effects within town twinning projects and related support measures.

— European activities for the promotion of the programme are expanded.

— Additional guidance is provided in relation to the submission of applications and eligibility criteria for selected strands of the programme.

— Systems are put in place to improve the financial management of the programme, in particular to ensure faster disbursement of funds to beneficiaries and simplify financial reporting procedures.

— Benchmarks and indicators against which to measure the success of projects, and the programme as a whole, are introduced for project monitoring and evaluation.

— The Commission provides guidance to projects on the data to be collected in individual evaluations to enable beneficiaries to monitor their efficiency and effectiveness better and enhance the possible contribution of these reports to the overall evaluation of the programme.

— The collection of e-mail addresses of indirect (non-funded) beneficiaries by direct beneficiaries is ensured for monitoring and evaluation purposes.

— Time/funds, are allocated for the analysis of projects’ final reports by Commission staff or during external evaluations, in order to enhance monitoring arrangements.

— In those instances where cost-benefit analysis of particular strands of the programme are undertaken, consideration is given to using their results to guide future allocation of funds.

**Sustainability**

— A database of potential projects or partners is made available online and that links to information about the results obtained through the different strands of activity of the programme are established.

— The external use of results from programme activities is incentivised (for instance by recognising plans for external use as a selection criterion).

**Letter from the Chairman to Shaun Woodward MP**

Thank you for your letter of 30 January. This was considered by Sub-Committee G on 22 February.

We regret that your Department’s problems with the administration of scrutiny procedures has led to a number of delays in the handling of this document and, ultimately, resulted in your override of our scrutiny reserve when the document was adopted at the 11–12 December 2006 Council meeting.

We very much welcome your review of the DCMS arrangements for handling scrutiny correspondence and in my letter of 8 February 2007 to David Lammy, I suggested that Simon Burton (Clerk to the EU Select Committee) and Barry Werner (Clerk to EU Sub-Committee G) should visit DCMS to speak to your scrutiny team about the House of Lords scrutiny process.

While the information you provide in your letter satisfactorily addresses the questions and issues we raised in my letter of 30 October 2006, we are most concerned about both the content and the timing of Commission’s Evaluation report of the 2004–06 Active Citizenship programme. The content of this seems to amount to little more than a description of what was done in the programme. It provides scant information about the effectiveness of the programme in achieving its aim of increasing awareness among citizens of EU activities and projects; and there is no attempt at all to interrelate the outcomes generated by the programme with its costs.

4 Refer to Culture Programme 2007–2013 (11572/04).
Moreover, we do find it entirely unacceptable that the Evaluation was not produced by the Commission until December 2006. For the assessment of the evidence it provided to be used for the thoughtful formulation of a 2007–13 programme starting on 1 January 2007, this was obviously far too late.

We therefore ask you to make the Commission aware of our view of the weakness of content and the lateness of timing of the Evaluation Report. Please would you urge them to ensure that, when evaluations such as this are needed in the future, they include more clear cut information for assessing the benefits of the outcomes achieved by the programme against its costs; and that the reports are produced to a timetable which makes them of practical use as an input to the development of subsequent programmes. We would be grateful if could let us know what undertakings the Commission makes as a result of your representations to them on this issue.

A final point is that we wonder why the Government has done so little to promote the activities undertaken under the 2004–06 programme in the UK as originating from the EU. If indeed benefits for active European citizenship have been achieved in the UK, it would appear that few, if any, members of the public are aware of the EU origin of the activities undertaken, even if they have been involved in them.

We will list this item in our Progress of Scrutiny document as a case of scrutiny override.

26 January 2007

COMMON AUTHORISATION PROCEDURE FOR FOOD ADDITIVES, ENZYMES, FLAVOURINGS AND INGREDIENTS (12179/06, 12180/06, 12181/06, 12182/06)

Letter from the Chairman to Caroline Flint MP, Minister of State for Public Health, Department of Health

The above documents and your accompanying Explanatory Memoranda dated 29 August 2006 were considered by Sub Committee G on 12 October.

We note that your consultation with stakeholders is under way. We trust that Government is consulting widely and will be pro-active in ensuring that all interested parties are encouraged to express their views in good time. We would be grateful if you would provide us with a full report on the outcome of those consultations and will retain these proposals under scrutiny pending your report.

12 October 2006

Letter from the Chairman to Caroline Flint MP

Your Supplementary Explanatory Memorandum (12180/06) on the above Proposal was considered by Sub-Committee G (Social Policy and Consumer Affairs) at its meeting of 19 April 2007.

Further to my letter of 12 October 2006, thank you very much for informing the Committee of the outcome of your consultation process.

We agree with the Government that the concerns expressed by the consumer group concerning the use of comitology should be allayed by the use of the new “regulatory with scrutiny” procedure.

Industry respondents expressed concern that the Commission has up to nine months to put forward a draft Regulation following the opinion from EFSA. We agree that this does appear to be a lengthy (although maximum) period but that it is acceptable as long as it is genuinely used for the purpose of consulting stakeholders.

We welcome the fact that the Commission will be obliged to consult with the applicant before making a decision on what information can be disclosed without compromising the applicant’s commercial position.

The European Parliament has suggested that environmental considerations be integrated into the authorisation process. We consider that this is in line with the EU’s sustainable development agenda but we feel also that the impact of this should be assessed in line with the Better Regulation initiative.

Finally, we conclude that the Government’s view that any system of review should be risk-based is entirely logical.

We are content to release the Proposal from scrutiny but we would be grateful if you could keep us informed on developments in Council. We look forward to also to receiving further information from you on the progress of the other three proposals within the food improvements agents package.

23 April 2007
COMMUNITY ACTION ON HEALTH SERVICES (1195/04)

Letter from Rt Hon Rosie Winterton MP, Minister of State for Health Services,
Department of Health to the Chairman

I attach an Explanatory Memorandum (not printed) on the European Commission’s communication on health services. This communication is a consultation document on the possible EU-level action on health services. It picks up on the development of European Court of Justice case law on patient mobility over the last 10 years which culminated in the Watts judgment of 16 May 2006, which confirmed that the case law on patient mobility does apply to tax-funded healthcare systems like the NHS. However, the case law which currently applies to the UK and, in certain circumstances, confers on NHS patients the right to be treated abroad at NHS expense—has left areas of legal uncertainty, for example on exactly how Member States can manage such cross-border health care.

Another motor behind this work is the removal of healthcare from the scope of the Services Directive. This cross-cutting Directive—which, in its original version, contained an article on the reimbursement of costs for cross-border patient mobility—was unsuitable for addressing the specificities of the healthcare sector. However, the removal of healthcare from the scope of the Directive—which we successfully argued for—has led the Commission to try to address some of these specificities through the work on health services.

The Department of Health sees potential advantages in health services legislation, not least in building a consensus between EU Member States and the EU institutions on how European Treaty articles apply to health care services. The consultation and debate that will follow offers us an opportunity to engage with other Member States and the Commission to influence the debate towards our thinking in this area.

The Health Council has already been active in this controversial area, where significant legal uncertainty remains. In June all 25 Health Ministers agreed on a statement of Values and Common Principles (Annex A) which framed the area where it thinks EU-level work should focus. The central point of this statement is that, although there are shared values across European health systems, there are very significant limits to the amount of harmonisation that could or should be attempted.

I would be delighted to come and speak to your Committee on these points, should you wish.

26 October 2006

Annex A

Statement on Common Values and Principles

This is a statement by the 25 Health Ministers of the European Union, about the common values and principles that underpin Europe’s health systems. We believe such a statement is important in providing clarity for our citizens, and timely, because of the recent vote of the Parliament and the revised proposal of the Commission to remove healthcare from the proposed Directive on Services in the Internal Market. We strongly believe that developments in this area should result from political consensus, and not solely from case law.

We also believe that it will be important to safeguard the common values and principles outlined below as regards the application of competition rules on the systems that implement them.

This statement builds on discussions that have taken place in the Council and with the Commission as part of the Open Method of Coordination, and the High Level Process of Reflection on Patient Mobility and healthcare development in the EU. It also takes into account the legal instruments at European or international level which have an impact in the field of health.

This statement sets out the common values and principles that are shared across the European Union about how health systems respond to the needs of the populations and patients that they serve. It also explains that the practical ways in which these values and principles become a reality in the health systems of the EU vary significantly between Member States, and will continue to do so. In particular, decisions about the basket of healthcare to which citizens are entitled and the mechanisms used to finance and deliver that healthcare, such as the extent to which it is appropriate to rely on market mechanisms and competitive pressures to manage health systems must be taken in the national context.
COMMON VALUES AND PRINCIPLES

The health systems of the European Union are a central part of Europe’s high levels of social protection, and contribute to social cohesion and social justice as well as to sustainable development.

The overarching values of universality, access to good quality care, equity, and, solidarity have been widely accepted in the work of the different EU institutions. Together they constitute a set of values that are shared across Europe. Universality means that no-one is barred access to health care; solidarity is closely linked to the financial arrangement of our national health systems and the need to ensure accessibility to all; equity relates to equal access according to need, regardless of ethnicity, gender, age, social status or ability to pay. EU health systems also aim to reduce the gap in health inequalities, which is a concern of EU Member States; closely linked to this is the work in the Member States’ systems on the prevention of illness and disease by inter alia the promotion of healthy lifestyles.

All health systems in the EU aim to make provision, which is patient-centred and responsive to individual need.

However, different Member States have different approaches to making a practical reality of these values: they have, for example, different approaches to questions such as whether individuals should pay a personal contribution towards the cost of elements of their health care, or whether there is a general contribution, and whether this is paid for from supplementary insurance. Member States have implemented different provisions to ensure equity: some have chosen to express it in terms of the rights of patients; others in terms of the obligations of healthcare providers. Enforcement is also carried out differently—in some Member States it is through the courts, in others through boards, ombudsmen etc.

It is an essential feature of all our systems that we aim to make them financially sustainable in a way which safeguards these values into the future.

To adopt an approach that shift focus towards preventive measures is an integral part of Member States strategy to reduce the economic burden on the national health care systems as prevention significantly contributes to cost reduction in healthcare and therefore to financial sustainability by avoiding disease and therefore follow up costs.

Beneath these overarching values, there is also a set of operating principles that are shared across the European Union, in the sense that all EU citizens would expect to find them, and structures to support them in a health system anywhere in the EU. These include:

Quality

All EU health systems strive to provide good quality care. This is achieved in particular through the obligation to continuous training of healthcare staff based on clearly defined national standards and ensuring that staff have access to advice about best practice in quality, stimulating innovation and spreading good practice, developing systems to ensure good clinical governance, and through monitoring quality in the health system. An important part of this agenda also relates to the principle of safety.

Safety

Patients can expect each EU health system to secure a systematic approach to ensuring patient safety, including the monitoring of risk factors and adequate, training for health professionals, and protection against misleading advertising of health products and treatments.

Care that is based on evidence and ethics

Demographic challenges and new medical technologies can give rise to difficult questions (of ethics and affordability), which all EU Member States must answer. Ensuring that care systems are evidence-based is essential, both for providing high-quality treatment, and ensuring sustainability over the long term. All systems have to deal with the challenge of prioritising health care in a way that balances the needs of individual patients with the financial resources available to treat the whole population.
**Patient Involvement**

All EU health systems aim to be patient-centred. This means they aim to involve patients in their treatment, to be transparent with them, and to offer them choices where this is possible, e.g. a choice between different health care service providers. Each system aims to offer individuals information about their health status, and the right to be fully informed about the treatment being offered to them, and to consent to such treatment. All systems should also be publicly accountable and ensure good governance and transparency.

**Redress**

Patients should have a right to redress if things go wrong. This includes having a transparent and fair complaints procedure, and clear information about liabilities and specific forms of redress determined by the health system in question (e.g. compensation).

**Privacy and confidentiality**

The right of all EU citizens to confidentiality of personal information is recognised in EU and national legislation.

As Health Ministers, we note increasing interest in the question of the role of market mechanisms (including competitive pressure) in the management of health systems. There are many policy developments in this area under way in the health systems of the European Union which are aimed at encouraging plurality and choice and making most efficient use of resources. We can learn from each other’s policy developments in this area, but it is for individual member states to determine their own approach with specific interventions tailored to the health system concerned.

Whilst it is not appropriate to try to standardise health systems at an EU level, there is immense value in work at a European level on health care. Member States are committed to working together to share experiences and information about approaches and good practice, for example through the Commission’s High Level Group on Health Services and Medical Care, or through the ongoing Open Method of Coordination on healthcare and long-term care, in order to achieve the shared goal of promoting more efficient and accessible high-quality healthcare in Europe. We believe there is particular value in any appropriate initiative on health services ensuring clarity for European citizens about their rights and entitlements when they move from one EU Member State to another and in enshrining these values and principles in a legal framework in order to ensure legal certainty.

In conclusion, our health systems are a fundamental part of Europe’s social infrastructure. We do not underestimate the challenges that lie ahead in reconciling individual needs with the available finances, as the population of Europe ages, as expectations rise, and as medicine advances. In discussing future strategies, our shared concern should be to protect the values and principles that underpin the health systems of the EU. As Health Ministers in the 25 Member States of the European Union, we invite the European Institutions to ensure that their work will protect these values as work develops to explore the implications of the European Union on health systems as well as the integration of health aspects in all policies.

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**Letter from the Chairman to Rt Hon Rosie Winterton MP**

At its meeting of 30 November 2006, Sub Committee G considered the above document, your accompanying Explanatory Memorandum and your letter dated 26 October 2006.

We agree that this is a controversial policy area requiring careful consideration and so we would be delighted to accept your offer of coming to speak to the Committee on the matter. Our staff have contacted your office to make the necessary arrangements; a date of 10 am on Thursday 25 January has been identified for your session.

We will retain the Communication under scrutiny, pending our forthcoming exchange of views.

6 December 2006
Letter from the Chairman to Rt Hon Rosie Winterton MP

Many thanks for the oral evidence which you and your officials presented to EU Sub-Committee G on Thursday 25 January. We will shortly publish a Report to the House which contains a transcript of the sessions.5

The meeting helped to improve our understanding of the significant and sensitive issues, of both a legal and political nature, that need to be resolved in order to find an acceptable way forward in this case. In particular, we recognise the point you made that there is a need to get the framework for European Health Services right so that it can provide a fair and transparent system for people seeking health care and, at the same time, ensure that it does not undermine the UK health service.

We would be grateful if you could let us have sight of the Government’s response to the Commission’s consultation and, in the future, keep us informed of progress towards the formulation of firm proposals by the Commission for establishing a framework which provides greater clarity. In the meantime, we are now content to release this consultation document from scrutiny.

8 February 2007

Letter from Rt Hon Rosie Winterton MP to the Chairman

Thank you for your letter of 8 February 2007. I was grateful for the opportunity for the appearance before your Committee to help broaden its understanding of the issues and way forward in this area.

I am happy to enclose a copy of our response to the Commission’s consultation and grateful to your Committee for lifting scrutiny.

I will keep the Committee updated of further developments.

14 March 2007

Annex A

UK CONSULTATION RESPONSE TO COMMISSION COMMUNICATION ON HEALTH SERVICES

Summary

1. We welcome the opportunity to respond to the Commission’s Communication on Health Services. This response takes account of the views of UK stakeholders that contributed to a consultation in the UK, and views expressed in the UK Parliament, following appearances by the Right Honourable Rosie Winterton MP, the Minister of State for Health Services, before both a House of Commons Standing Committee, and Sub-Committee G of the House of Lords European Union Select Committee.

Minutes of the Commons appearance are available at the following web link:
http://www.publications.parliament.uk/pa/cm200607/cmqeneral/euro/070116/70116s01.htm

Minutes of the House of Lords appearance will be published shortly at the following link:
http://www.publications.parliament.uk/pa/ldlldeucom.htm#evid

2. This is an important piece of work. Member States face an increasing challenge in providing sustainable health services in the face of demographic ageing and globalisation. Cross-border healthcare, and non-regulatory cooperation, can add value to Member States’ efforts in this field, provided that the fundamental rights of Member States for the organisation and management of their health care systems are respected.

3. Recent developments in the case law of the European Court of Justice, and the ensuing debates, have raised other, fundamental, issues:

— The first is the underlying question of the wider impact of the Treaty on health systems. Here, we think it is important to continue the discussion that was started in the High Level Reflection process, and which was reflected in the Statement on Values and Common Principles that the EU Health Ministers agreed at the Health Council in June 2006. Further work is needed on how the impact of the Treaty might be managed to ensure that Member States continue to be able to discharge their responsibilities for the management and operation of the health systems of the European Union;

— The second is the growing need now to address the tensions that are arising between the principles that underpin the long-standing EU Regulations in this areas (Regulation 1408, as recently amended) and the caselaw of the European Court of Justice. Although relatively few people are

currently interested in going abroad from the UK in order to access treatment, there is considerable use made of other rules which allow access to treatment while people are abroad. More work is needed, including at the Ministerial level, to ensure that this key practical benefit of EU membership is managed in a way that is financially sustainable for the longer term.

4. In that context the UK welcomes the Commission’s launching of the debate on the specific issue of the terms under which patients access health care services when they travel elsewhere in the European Union, mostly at their own instigation, in order to be treated. There are some important specifics to get right in this area, and these form the main basis of our response to this consultation.

5. The Communication also flags the importance of non-legislative work in support of Member State action in the health care field (for example on centres of reference and on non-legislative guidelines for cross-border commissioning of services). The UK agrees that there is useful work to be done in this area, and endorses the Commission’s view that this sort of non-legislative approach is more appropriate to this sort of work.

Detail

6. The UK is pleased to have the opportunity to respond to this Communication. The Communication essentially asks four questions, and we will respond to these questions in the rest of this document:

— What is the current extent of cross-border healthcare/patient mobility?
— What legal certainty is needed in this area?
— What work can usefully be done through non-regulatory cooperation?
— What sort of legal instrument would be appropriate?

What is the current extent of cross-border healthcare?

7. Whilst significant use is made in many Member States of the provisions under R1408 that allow EU citizens who are retired, working or travelling in other Member States to access healthcare in other Member States, the number of patients interested in going abroad specifically for treatment is relatively low in many Member States: in the UK, around 280 people went abroad for such treatment in 2005–06.

What legal certainty is needed in this area?

8. The UK thinks that there are certain fundamental underlying principles that need to underpin, and be reflected in, any proposals in order to ensure a system of patient mobility that is manageable and sustainable in the long term, and also that respects the rights and responsibilities of Member State to organise and manage their health care systems:

— The home health system in the individual Member State needs to be able to determine what health care services are offered to individual patients, and to manage the clinical decision about whether, given the individual circumstances of the patient, “undue delay” applies. In the UK this is done through referral processes as an integral part of the process of determining what health services will be offered to the patient. Such processes must be respected in any legislative proposals (this will require a development of the case law with regard to “hospital” and “non-hospital” services; see below).

— Patient mobility needs to be “cost-neutral” to the home health system: where patients choose to go abroad this shouldn’t cost their home health system more than it would have done to treat them at home. Where the cost of treatment abroad is lower than at home, the home health system should only be required to pay for the actual cost of treatment.

— Clarification that, when patients request to go abroad in order to be treated (as opposed to services directly commissioned abroad), it is the standards of care, governance, and redress arrangements of the MS of treatment that apply: health systems can’t take responsibility for the actions of providers they don’t regulate or assess.

— A principle of transparency could be established making it clear what information should be made available to patients by providers before they travel abroad for treatment. This information should include: the nature of the service being offered; full costs; what is covered by consent; full details of what is included in the package; which systems of redress, care and governance will apply. What this means in practice may well differ substantially between Member States.
9. In terms of any specific legal action, it would need to be specific to three different types of patient mobility, and their practical handling:

- Patient mobility where a patient goes to another EU Member State (MS) for a treatment that their insurer does not fund (e.g., cosmetic surgery), or their system does not provide (and is thus not entitled to reimbursement of costs).
- Cross-border commissioning of services in one Member State by the health system of another Member State.
- Patient mobility where a patient goes to another EU Member State for a treatment that their insurer will fund, or system will provide.

10. In the first case, where a patient is essentially self-financing, legal clarity on the standards, governance, and systems of redress that apply is needed; clearly these should be those of the MS of treatment. Any proposals could seek to clarify the information that providers are required to provide to patients to enable them to make safe, informed decisions before purchasing health services from a provider in another MS.

11. For the second type of patient mobility, cross-border commissioning of services can be done mostly on an intergovernmental basis, although there may be a case for some limited European guidelines on this, e.g., reflecting the principle that national standards apply, and clarifying the duty of care that the commissioning authority has towards the patients it sends abroad.

12. Patient mobility where patients choose to go abroad specifically to receive treatment poses the biggest challenge. Although the current level of this sort of patient mobility is very low in the UK, this may not be the case in all the EU Member States. It may also be that this kind of mobility increases across Europe in the future. Any system that is put in place to facilitate patient mobility therefore needs to be both sustainable and flexible enough to take account of long-term developments.

13. We were surprised to see in the Commission’s Communication the statement that the European Court of Justice has ruled that people may seek any “non-hospital” care (to which they are entitled in their own Member State) in another Member State without prior authorisation. We do not agree with what the Communication says on this point. In fact the Court has said that it has yet to see a justification for a prior authorisation system for non-hospital care.

14. The Court has stated that prior authorisation systems were justified for “hospital” services as they sought to ensure “sufficient and permanent accessibility to a balanced range of high-quality treatment in the State concerned”; that they assisted in controlling costs; and that they assisted in preventing “any wastage of financial, technical, and human resources”. We think that this justification applies equally to some services that are delivered in a “non-hospital” setting, as they require no less planning, funding, or careful management than “hospital” services. Consideration should also be given to the drive in many Member States, including the UK, to move more services from being delivered in hospital to being delivered in a primary care setting.

15. European Court of Justice (ECJ) case law has stated that the decision as to whether a patient faces “undue delay” in accessing services should be based on “an objective medical assessment of the patient’s medical condition, the history and probable course of his illness, the degree of pain he is in and/or the nature of his disability at the time when the request for authorisation was made or renewed” (Watts, para 119). The UK government is firmly of the view that this is a sufficient definition of the factors that need to be taken into account when assessing “undue delay”. Any attempts to define the concept of “undue delay” further will contradict the logic of the ECJ case law, which is that it should always be clinically assessed against the needs and circumstances of the individual.

16. Any proposals on patient mobility should develop the existing case law on this point. In line with the key principles put forward in paragraph 8 of this response, the most effective way to do this would be to state the principle that prior authorisation systems are justified for treatments that are accessed on referral in the home Member State.

17. The basic principles of the system by which patients can access medical treatment in another EU Member State by way of entitlements under Article 49 of the Treaty differ from the basic principles of the system of referrals under Regulation 1408/71 (“E112 referrals”). This has the potential to cause confusion, particularly to patients (e.g., the reimbursement principles for the two systems are entirely different). One simple way of
addressing this confusion for the circumstances where patients ask to go abroad would be to make the use of the E112 referral system optional for Member States. In the long term, the principles developed in the Court’s case law (eg that reimbursable costs for mobile patients are restricted to the level that the treatment would have cost in the home Member State) seem a more sensible and sustainable basis to handle requests to go abroad for treatment.

18. In areas other than cross-border healthcare there are two issues relating to professional mobility that could be dealt with in legislation:

— A duty on regulatory authorities to share information about current professional status on a proactive basis wherever possible, on health professionals moving between countries, in line with the “Crossing Borders” Edinburgh Agreement.

— Clarification that Member States can require health professionals from overseas to be proficient in the language in which they will be working.

What work can usefully be done through non-regulatory cooperation?

19. The UK believes it would be appropriate to consider developing further the work of groups such as the Commission’s High Level Group on Health Services and Medical Care, so that there will be a standing mechanism of Member State experts who can advise the EU institutions on the implications of EU activity and proposed legislation for the health systems of the EU.

20. The UK believes that there is much benefit to be gained from EU-level networking of clinical and health management professionals, and from facilitating the exchange of good clinical practice.

21. Cross-border commissioning of services, as referred to in paragraph 11 above, may be a fruitful area for developing information sharing systems, in order to promote intergovernmental cooperation. This kind of information sharing will also help to promote continuity of care in patient mobility, which is a key concern.

22. The UK is concerned about the risks of over-ambition in the area of the role of IT in cross-border healthcare. IT clearly has an important role in supporting the delivery of cross-border healthcare, and we support strategic development of the options that will enable this in the future.

23. However, it is important to understand that there are some very difficult problems to solve which are not directly related to the use of IT. These are evident, particularly in relation to ensuring confidentiality and security, and also in adopting common standards and clinical technologies. It is essential that we proceed cautiously and in full consultation with the appropriate clinical professions. Where IT is used to support cross-border care it must be effective, transport reliable and accurate patient information, and deliver real benefits to citizens moving between Member States. It must also take full cognizance of the legitimate concerns of citizens about the privacy of confidential health information. In particular, we see no case for a central data warehouse of information about patients.

24. When discussing the development of IT, the potential costs and benefits of any proposals must be very carefully considered.

What sort of legal instrument would be appropriate?

25. We can see potential value in legislation in this area provided that it helps health systems to manage requests to go abroad effectively, and provides legal certainty to patients: in practice, this means not just writing out the case law, but dealing with some of its underlying ambiguities.

26. It is important that any proposed solution is proportionate to the demand from patients. Whilst significant use is made in many Member States of the provisions under R1408 that allow EU citizens who are retired, working or travelling in other Member States to access healthcare in other Member States, the number of patients interested in going abroad specifically for treatment is relatively (very) low in many Member States: in the UK in 2005–06 around 280 people went abroad to receive treatment in this way. However, this may grow: any system that is put in place to facilitate patient mobility therefore needs to be both sustainable and flexible enough to take account of long-term developments.

27. In the context of 27 different health systems, and in accordance with the statement of Values and Common Principles that EU Health Ministers endorsed in June 2006, the detailed implementation of any systematic approach to patient mobility will differ. The key aim for any EU-level proposal should be to ensure that such implementation does in fact happen, in accordance with the key principles listed in paragraph 8 above. Any proposals should be based on these high-level principles, and should not attempt to construct an overly-detailed system that would prove unwieldy or unworkable.
28. There would be very limited value in a proposal that simply transposes ECJ case law into legislation. There are real uncertainties that arise from the existing case law that need to be addressed, for example the question of “hospital” and “non-hospital” care mentioned above. Clarifying these uncertainties is in the interests of both citizens and those planning and managing services.

COMMUNITY STRATEGY 2007–2012: HEALTH AND SAFETY AT WORK (6775/07)

Letter from the Chairman to Lord McKenzie of Luton, Parliamentary Under-Secretary of State, Department for Work and Pensions

Your Explanatory Memorandum (EM) on the above Communication was considered by Sub-Committee G (Social and Consumer Affairs) at its meeting of 29 March 2007.

We welcome the overall focus of the Strategy on improving the implementation of existing legislation and simplifying where possible. We are of the view, however, that good implementation of existing legislation and application of good practice should lead to a significant reduction in work-place accidents without the need for a specific EU-wide target. Such a target has, however, been proposed by the Commission. Your EM states that different Member States would make different contributions to any target, based on an assessment of national priorities. We would appreciate a further explanation of your thoughts in this regard.

We are pleased to note the inclusion in the Strategy of mental health in the workplace. As you will be aware, Sub-Committee G has been undertaking an Inquiry into the Commission’s Green Paper on Mental Health. The final Report will be published shortly. We will be particularly interested to read the Government’s response to the Report in the light of the Commission’s call in the Strategy for national strategies to incorporate specific initiatives aimed at preventing mental health problems and promoting mental health more effectively.

Finally, the Commission has stated that one aspect of the strategy is the need to support SMEs in the implementation of relevant legislation. We would be grateful for information from you on the likely nature of this support.

We will hold the Communication under scrutiny and we look forward to further information from covering the points made above prior to adoption of the Council Resolution.

29 March 2007

Letter from Lord McKenzie of Luton to the Chairman

Thank you for your letter of 29 March on this Communication. I am delighted to hear that the Committee shares the Government’s view that there is much to welcome in the Commission’s new Community strategy on health and safety at work.

The Committee asked for the Government’s views on how different Member States would contribute to the 25% accident reduction target. It may help the Committee to know that, in a presentation to the Council’s Social Questions Working Party on 21 March, the Commission indicated that its target of a 25% reduction in the incidence rate of accidents at work was intended to be seen as an aspiration and not as anything more definite. Furthermore, it accepted that the only way in which an EU-wide target could work was through Member States setting their own targets, since it is not the Commission that has to take the action required to reduce accident rates, but national Governments and the social partners. This presentation therefore reinforced the Commission’s Communication, particularly at section 5, where it says that “The degree to which the Community strategy is successful will depend on the Member States being committed to adopting coherent national strategies . . . These strategies should be defined on the basis of a detailed evaluation of the national situation . . .”.

Britain has used national targets to help improve health and safety at work for nearly seven years now. In June 2000, the Government and the Health and Safety Commission (HSC) set national targets, which were to:

- Reduce the number of working days lost per 100,000 workers from work-related injury and ill health by 30% by 2010;
- Reduce the incidence rate of fatal and major injury accidents by 10% by 2010;
- Reduce the incidence rate of cases of occupational ill health by 20% by 2010; and
- Achieve half the improvement under each target by the halfway stage (2004).

The Health and Safety Executive (HSE) concluded that, at the halfway stage, the working days lost reduction target was possibly met, the reduction target for ill health was probably met, but the target for reducing the incidence rate for fatal and major injuries was not met. The current assessment is that we are on track to meet the days lost and ill health 10 year targets, but we still have some work to do on accident rates. Not only do the targets play an important role in engaging key health and safety stakeholders in improving national health and safety performance, but they also allow HSC to track progress against its workplace health and safety strategy to 2010 and beyond.

The Committee will readily see that achieving a 25% reduction in workplace accident rates over 5 years in Britain would be extremely challenging, not least because the UK has one of the best workplace health and safety records in the EU. Member states all start from different positions. It is only sensible that different member states make different contributions to achieving the target.

I note the Committee’s comments on the Strategy’s call to incorporate specific initiatives on mental health into national health and safety strategies. We look forward to the forthcoming Report from Sub-Committee G on the Commission’s Green Paper on Mental Health. The Government will respond to that in due course.

The Committee asked for the Government’s views on the likely nature of support for SMEs. The Commission suggests in its Communication (at section 4.1) that support for SMEs needs to take several forms, but it particularly notes instruments such as good practice guidance written in simple language that is easy to understand and easy to put into practice; simple tools to facilitate risk assessment; and advice on the promotion of workers’ health.

In the UK, we already have several examples of how the Government and the devolved administrations are providing workplace health advice to SMEs, through:

— HSE’s “Workplace Health Connect” service, specifically aimed at SMEs;
— The Scottish Executive’s Health at Work Awards, delivered through the Scottish Centre for Healthy Working Lives;
— The Welsh Assembly Government’s Corporate Health Standards; and
— NHS Plus, which provides advice on occupational health.

In addition, HSE is developing a strategy for more effective communication and engagement with small businesses. This will include a strong emphasis on ensuring we provide suitable information and advice to small businesses to help them comply with their regulatory requirements.

I hope this reply answers the Committee’s questions satisfactorily.

12 April 2007

CREDIT AGREEMENTS FOR CONSUMERS (13193/05)

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

Further to my letter of 29 September 2006 in response to your Report on EM 13193/05 (Consumer Credit Directive), I am updating your Committee and Sub Committee G on recent developments.

Although I cannot say with absolute certainty, we believe the Finnish Presidency intend to table the proposed Directive for political agreement at the Competitiveness Council on 5 December. Given that the proposal has not received scrutiny clearance yet I thought it sensible to alert you to this possibility.

Should the proposal be tabled for political agreement, the choice in terms how the UK should vote is not entirely straightforward. As I have said during earlier correspondence, in particular, the Government shares the Committee’s concern about the need for any amending Directive to maintain existing high levels of consumer protection and make a real contribution to the opening up of markets. We also believe a full impact assessment should have been undertaken.

Since I wrote on 29 September in response to your Report published on 5 July, we have published the Government response to the supplementary consultation undertaken earlier this year. A copy is attached (not printed). We have also been working hard to secure a number of improvements to the text. Progress has been made in a number of areas that have been of particular concern. In particular:

Home Purchase Plans

The Commission and the Presidency have accepted the case for treating Islamic home purchase plans in the same way as other equivalent mortgage products. The result is a limited purpose test which exempts from the scope of the Directive credit agreements for the acquisition or retention of property rights in land or in existing or projected building.

Credit Unions

Following lengthy discussions with Ireland and Poland (who also have credit unions but have very different policy objectives) as well as with the Commission, we believe that we are now on the verge of a satisfactory outcome, although we need to ensure that this is not opposed by other Member States in the Council Working Group. The solution would allow UK credit unions to be exempted from the scope of the Directive on the basis of a market share test applied both to individual credit unions and to the UK sector as a whole. At the same time Ireland would be able to apply the light touch regime envisaged in the original Commission Proposal and Poland would be able to apply the full requirements of the Directive. This looks complex and risks arousing suspicion amongst other Member States that this is simply special treatment for UK credit unions, but we have warmed up other key Member States and our proposal did not encounter significant opposition at the last Working Group meeting.

Overdrafts

We have as yet had little success in persuading other Member States that there is a problem here despite a degree of lobbying by the industry at both national and European levels. Our key concerns are: first, that the application of an APR to overdrafts will result in an indication of cost which might be positively misleading for consumers; second, that the requirement for written information in advance might reduce flexibility and inconvenience consumers seeking urgent overdraft facilities; and, third, that the requirements for notifying consumers individually of interest rate changes would be unduly burdensome. We have had some success in reducing the burden on lenders to provide information to consumers about interest rate changes immediately and individually and the Presidency has accepted our view on the APR, although we will need to work to convince other Member States that this is the right outcome.

Right of Withdrawal

Although we do not believe that the case has been made for a right of withdrawal in face-to-face contracts, other Member States do not share our point of principle. Nevertheless, a number of Member States, including France and Ireland, share our concerns about how this provision would work in practice in the case of linked transactions for credit and goods. We are continuing to work towards improving the wording of the relevant Article as well as seeking further information from the industry about the extent of the problem. We are also considering with legal advisers how far we might be able to implement this provision in a way which would meet the spirit of the Directive without creating problems for traders selling goods on credit.

Responsible Lending

Despite the general level of support for including a responsible lending principle in the Directive, we have so far succeeded in moving references to responsible lending from the substance of the Directive to a Recital and we believe that this would remove the legal uncertainty which originally caused us concern and would allow the UK to continue to take appropriate action against irresponsible lending. We will need to ensure that there is no reversion to the earlier position as a result of pressure from other Member States.

Information Requirements

We had problems with advertising (Article 4), pre-contractual information (Article 5) and contractual information (Article 9). In our view many of the original Directive’s requirements for information would have been unnecessary, imposing additional cost and risking information overload for consumers. The information requirements in all three articles have now considerably improved and are more in line with UK practice. Nevertheless, a major difficulty on advertising is that it would not be possible for Member States to require lenders to show an APR in certain circumstances without triggering full information requirements. This would undermine the UK’s existing three-tier approach and might cause difficulties in the case of media advertisements. The key outstanding problems with pre-contractual and contractual information
requirements are that lenders would be required to provide amortisation tables (which we believe are of limited use to consumers and can be burdensome) and that we would no longer be able to require wealth warnings to be included on standard documentation. In most other respects the list of pre-contractual/contractual information requirements has been more closely aligned with UK requirements and a catchall provision allowing Member States to require other contractual terms to be shown is helpful.

APR Assumptions

We are having some success in arguing that go-to rates are more applicable than blended rates in respect of the APR assumptions contained in Article 18.

On balance, given the recent progress, I believe it would be better to have the discretion to join the Common Position if political agreement is sought. Our good relations with the Finnish Presidency enhances the prospects of securing further improvements in the run-up to and at the Competitiveness Council. I also think that it would be more advantageous to be part of the Common Position than outside of it. It would also leave us better placed to continue to seek improvements during the European Parliament’s second reading of the proposal.

I apologise for pressing you in this way but negotiations have moved much more rapidly over recent weeks than was anticipated and given the lack of time between now and the Competitiveness Council and in the light of the above developments, I would be very grateful if the Committee would agree to lift the scrutiny reserve on this proposal.

21 November 2006

Letter from the Chairman to Rt Hon Ian McCartney MP

At its meeting of 30 November 2006, Sub Committee G considered your letter of 21 November relating to the Consumer Credit Directive.

We are grateful for the information that you have provided on negotiations in Council and we are content that progress has been made on a number of key aspects of the dossier. We understand also, from your letter and from our assessment of the Government’s response to our Inquiry Report published earlier this year, that our concerns about the proposed Directive are largely shared by the Government.

Since receiving your letter however, we understand, from one of your officials dealing with this subject, that opposition among Member States to some aspects of the proposal has increased in the days running up to the 4–5 December Competitiveness Council. In consequence, we are told that the Finnish Presidency will not now seek political agreement on the Directive in its present form.

In the circumstances, we will retain the Directive under scrutiny. Please would you let us know the outcome of future discussions about the Directive so that we can consider this issue further at an appropriate time.

6 December 2006

Letter from Rt Hon Ian McCartney MP to the Chairman

Thank you for your letter of 6 December.

I note that the Committee will be retaining the proposed Directive under scrutiny and fully understand your wish to do so, following the decision of the Finnish presidency not to seek political agreement on the proposal at the Competitiveness Council on 4 December. With this in mind, I thought it might be helpful if I updated you on likely next steps.

Although it seemed highly likely that political agreement would be sought, in the days leading up to the Council, it became clear that a number of Member States felt insufficient progress had been made in resolving outstanding issues. Instead, a discussion was held at the Council about what should happen next.

During the discussion the UK, along with a few smaller Member States, questioned the approach being taken and called for a fundamental evaluation of what was needed to achieve a single market in consumer credit. However, most Member States and the European Commission signalled that they wanted negotiations on the current proposal to continue and Germany, speaking as incoming Presidency, promised to take the dossier forward actively on the basis of the current text.

While we continue to have major doubts about the overall value of the proposal, the outcome of the Council suggests that most Member States will be prepared to agree to it subject to the resolution of a few key concerns. This being the case, our main priority in the short term should be to protect the concessions we achieved under the Finnish Presidency (which were considerable) and seek further improvements to the text in priority areas.
for the UK. We had particularly close working relations with the Finnish Presidency and would aim to forge similarly good ones with the German Presidency, by working constructively on the details of the proposal. In particular, they have asked us to consider what could be done to add value to the proposal. We shall of course look into this with them.

We will also be maintaining close links with the European Parliament as negotiations go forward. The Parliament has recently commissioned its own study of the impact of the draft Directive which is due in the first part of 2007.

Although it is hard to predict future developments with any great certainty at this stage, I would expect there to be a strong likelihood that the proposal would be put for political agreement at the Competitiveness Council scheduled for 21–22 May 2007 (there is also a Council scheduled for 19 February but it is unlikely agreement would be sought then). Should this be the case, we will probably find ourselves with the same decision we faced recently regarding our position on the proposal.

9 January 2007

Letter from the Chairman to Rt Hon Ian McCartney MP

Thank you for your letter of 9 January, which was discussed by EU Sub-Committee G at its meeting on 25 January.

Your progress report about the Commission’s proposals for a Directive on Consumer Credit was most welcome. Please continue to keep us informed about any future developments of significance. In particular, please let us know as far as possible in advance if, as you suggest is likely, a revised text is to be put forward for political agreement at the 21–22 May Competitiveness Council meeting.

We continue to retain this document under scrutiny.

26 January 2007

Letter from Rt Hon Ian McCartney MP to the Chairman

Further to my letter of 9 January, I am writing to up-date you on recent developments on the Consumer Credit Directive.

Negotiations on the proposal resumed in January and the Presidency has announced that it is their intention for an agreement to be reached on this proposal at the Competitiveness Council on 21–22 May. The Presidency has recently come forward with some drafting suggestions and a number of working groups have been held over the past few weeks in an attempt to reach a compromise that would be broadly acceptable to all Member States.

The changes proposed do not radically alter the previous draft text produced under the Finnish Presidency. From a UK perspective, the following areas are of most importance:

Pre-contractual Information

The Presidency has proposed that pre-contractual information is presented to the consumer in the form of a standard information sheet. The intention is that the information currently listed in Article 5 would be transferred into the standard information sheet to ensure that it is presented in a standardised way across Member States. As with the current list of requirements in Article 5, our priority here is to ensure that the information required is compatible with the kind of pre-contractual information consumers receive in the UK. We are broadly content that the list would be compatible but remain concerned about the lack of any reference to information about how interest payments are allocated during an agreement, while doubts continue about whether we would be able to retain our existing requirements concerning wealth warnings.

Overdrafts

We had made significant headway under the Finnish Presidency in terms of ensuring that the provisions in the proposal did not impose inappropriate requirements on overdrafts. The latest text has undone some of these improvements, in particular by re-inserting the requirement for an APR for overdrafts which we think will result in an indication of cost which might be positively misleading for consumers.
We also continue to argue that the requirement for written information in advance of an overdraft might reduce flexibility and inconvenience consumers seeking urgent overdraft facilities. The Presidency has also now proposed that the standard information sheet referred to above should apply to overdrafts but it seems very unlikely that this will be supported by the majority of Member States.

Overrunning of Current Accounts

We remain concerned about the impact the proposal could have on overrunning of current accounts. In particular that singling out requirements concerning information on unauthorised overdraft charges could interfere with Member States' ability to maintain consistent homogenous, legislation on current accounts which we see as something quite separate to the Consumer Credit Directive.

Early Repayment

The Presidency has come up with a new proposal that while not exactly mirroring our own rules on early settlement, we think we could support because it would not impose excessive costs on consumers or interfere with our actuarial system of calculating amounts due.

Next Steps

Our recent efforts have been focussed on making sure that the concessions we achieved under the Finnish Presidency are retained and also seeking to improve the text in other key areas. In addition to the areas referred to above, these include the provisions on advertising where it would not be possible for Member States to require lenders to show an APR in certain circumstances without triggering full information requirements, as is the case in the UK. The provisions on right of withdrawal have also been causing some concern but we have been working with the Presidency to amend the text to enable us to implement this provision in a way which would meet the spirit of the Directive without creating problems for traders selling goods on credit.

As in December, whether or not the UK would be willing to support the proposal must depend on its final nature and how much success we have in meeting the key concerns outlined above. In a fast-moving negotiation, it is of course very difficult at this stage to predict what our position would be on the day, if as expected, the Presidency seek to reach a Common Position in May. However, I thought it would be helpful to bring you as up-to-date as possible on these developments so that the Committee could take a view on whether it would be appropriate to lift your scrutiny reserve in advance of the 21–22 May Council meeting. If the situation changes I will of course up-date the Committee.

4 April 2007

Letter from the Chairman to Rt Hon Ian McCartney MP

Thank you for your letter of 4 April providing the latest information about the progress of negotiations in relation to the Consumer Credit Directive. This was discussed by Sub-Committee G at their meeting held on 26 April.

We are pleased to hear that the considerable improvements achieved under the Finnish Presidency have largely been consolidated. We also note that the document is likely to come up for political agreement at the 21–22 May Competitiveness Council.

We recognise that there remain a number of points—as described in your letter—on which the Government wishes to make further progress in negotiation before agreeing the proposal; and we support your efforts to do this in the coming few weeks before the Council meeting.

Against this background, we are now content to clear this document from scrutiny.

Please be aware also that, at its meeting held on 24 April, the EU Select Committee agreed to withdraw the recommendation for debate of our Consumer Credit Inquiry Report which was made at the time of the Report’s publication in July 2006.

Please would you let us know the outcome of the 21–22 May Council meeting in relation to the Directive.

27 April 2007
CULTURE PROGRAMME 2007–2013 (11572/04)

Letter from David Lammy MP, Minister for Culture, Department for Culture, Media and Sport to the Chairman

I am writing to bring your Committee up to date with the Culture 2007 programme.

We believed this had been released from scrutiny, however, closer investigation has revealed that in fact, although your Committee agreed to the UK reaching a partial political agreement in November 2005, the financial aspects of the programme were still held under scrutiny.

This situation may have been exacerbated by the fact that the DCMS Scrutiny Coordinator post was vacant for a period of five months at the beginning of 2006.

However, this does not excuse our failure to update your committee on the progress of this proposal. As you are aware DCMS is currently undertaking a full review of how its scrutiny correspondence is dealt with. The review has highlighted instances where we have failed to update you. For this I can only apologise and offer my assurance that officials at the Department for Culture, Media and Sport will ensure this does not occur again.

An update on the developments of the Culture 2007 programme is as follows:

Following an agreement (on 4 April 2006) on the Financial Perspective (2007–2013) which allowed the budget for this programme to be set, a full political agreement was reached at the Culture Council held on 18 May 2006 and the common position adopted on 18 July 2006.

A budget of €400 million for the Culture programme over the period 2007–13 has been agreed. This is a small increase in real terms in comparison to the current total Programme expenditure (after account has been taken of enlargement and the inclusion of strands 2 and 3, which did not previously fall within the Culture Programme). This level of funding is consistent with the agreed Financial Perspective. Also, in comparison with the programmes that preceded it, the Culture programme goes further in the reinforcement of cultural cooperation by focusing the EU action on three main objectives which have been identified as having strong European added value: the trans-national mobility of people working in the cultural sector, the trans-national circulation of works of art as well as of artistic and cultural products and intercultural dialogue.

The European Parliament second reading took place on 25 October 2006. The Commission has accepted the three amendments proposed by the European Parliament. These amendments were the result of a global compromise between the European Parliament and the Council in view of the second reading. They are in line with the objectives of the initial proposal of the Commission.

The first amendment underlines the need already expressed in the initial proposal to go beyond a mere project-approach and to support the permanent activities of cultural organisations active at the European level.

The second amendment limits the comitology procedure to one sub-strand of the programme (ie multi-annual cooperation projects) and is much closer to the initial proposal of the Commission than the Council common position. The comitology procedure will apply neither to short duration projects (strand 1.2, cooperation measures) nor to cultural organisations (strand 2) so as to avoid a longer internal decision-making procedure for the implementation of the programme with no real added value.

Finally, the third amendment will reduce the number of days between the publication of the Decision in the Official Journal and its entry into force, from 20 to just one, which will speed up the implementation of the programme.

The UK favoured these amendments as they support more long term projects and reduce the amount of administration involved. Consequently the proposal was adopted by the Council at second reading on 11 December with the Council supporting the EP’s amendments.

I apologise again for not having previously updated the Committee on these developments before agreement was reached.

10 January 2007

Letter from the Chairman to David Lammy MP

Thank you for your letter of 10 January. This was considered by Sub-Committee G on 8 February.

We regret that your Department’s misunderstanding of the status of scrutiny of this item, led you inadvertently to override our scrutiny when you agreed to the Commission’s proposals at the 18 May Culture Council meeting. Against this background, we very much welcome your review of the DCMS arrangements for handling scrutiny correspondence.
When the review is complete and your new arrangements are in place, Simon Burton, Clerk to the EU Select Committee and Barry Werner, Clerk to EU Sub-Committee G (Social Policy and Consumer Affairs) would be very happy to visit DCMS to talk to your officials about the House of Lords EU scrutiny procedures. Perhaps your scrutiny coordinator could contact Barry if you wish to take this forward.

Thank you for the further information you provide in your letter about the costs of the 2007–13 cultural programme and about the amendments to the Commission’s proposals put forward by the European Parliament.

We will list this item in our Progress of Scrutiny document as a case of scrutiny override.

8 February 2007

DEMOGRAPHIC FUTURE OF EUROPE (14114/06)

Letter from the Chairman to James Plaskitt MP, Parliamentary Under-Secretary of State, Department for Work and Pensions

Thank you for your Explanatory Memorandum submitted on 3 November. This was considered by the Sub-Committee on 30 November.

We recognise the significance of the challenges posed by the ageing of the EU population and the framework for policies designed to address these challenges which is set out in the Commission document.

While we recognise and support many of the policy directions advocated in the Commission’s Communication, we are concerned that the concept of encouraging families to have more children should not become part of an accepted response to the problems posed by an ageing population structure. In this context, we encourage the Government to maintain the position—set out in your Explanatory Memorandum—that its policies do not directly aim to increase fertility rates.

We feel that the two yearly meetings of the European Demographic Forum will be an appropriate way of sharing the experiences of Member States in tackling these issues and, on that basis, we are content to release the document from scrutiny.

We are very conscious that an understanding of the future evolution of the population demography of Europe is most important for the consideration of many of the issues that we consider in the domain of EU Social Policy. Members of EU Sub-Committee G (Social Policy and Consumer Affairs) would therefore be most grateful to receive for information copies of key documents to be considered by the European Demographic Forum. Please could you arrange for these to be sent for distribution to Members to the Sub-Committee’s Clark—Barry Werner.

6 December 2006

DONATION OF TISSUES AND CELLS (14120/06)

Letter from Rt Hon Rosie Winterton MP, Minister of State for Health Services, Department of Health to the Chairman

I am writing to let you know about the publication of the above document. An Explanatory Memorandum is attached (not printed).

BACKGROUND

On 17 October 2006, the Council of the European Union published a report from the Commission on the promotion by Member States of voluntary unpaid donation of tissues and cells.

It is a requirement of Article 12 of Directive 2004/23/EC—a Directive setting standards for the safety and quality of all human tissues and cells (but not blood or organs) intended for or used in all human applications—that Member States shall endeavour to ensure voluntary and unpaid donations of tissues and cells and shall report to the Commission on these measures before April 2006 and thereafter every three years.
On the basis of these reports, the Commission shall inform the European Parliament and the Council of any necessary further measures it intends to take at community level.

RESPONSE FROM THE UK

The UK responded to a questionnaire circulated by the Commission earlier this year, outlining the measures taken in the UK to ensure voluntary unpaid donation and the legislation in place to restrict organ, tissue and cell trafficking. The attached Report from the Commission includes the UK response (not printed). In summary, organ, tissue and cell trafficking are offences under the Human Tissue Act 2004 and Human Fertilisation and Embryology Act 1990 but both Acts do allow for the reimbursement of out of pocket expenses. In the UK, reimbursement for tissue and cell donation is likely to be exceptional, for example meeting travelling expenses for the donation of bone marrow and donors of eggs and sperm can claim “reasonable expenses” which are capped.

IMPLICATIONS OF THE REPORT

The Report’s Action Plan proposes that Member States collect detailed information on the day to day practice of compensation which can then be shared with the Commission. Based on that information the Commission would explore with the Member State the need for further guidelines, greater transparency or the need to document the expenses reimbursed. In the UK, there is clear legislation to prevent such trafficking and no evidence to suppose that trafficking takes place.

COMMISSION DIRECTIVE 2006/86/EC

The Committee may also wish to be aware that on 24 October 2006, Commission Directive 2006/86/EC was published in the Official Journal of the European Union. This Directive is the second of two Commission Directives containing the technical detail necessary to help implement parent Directive 2004/23/EC to ensure the quality and safety of human tissue for human application.

We have worked hard with officials in the Devolved Administrations and stakeholders within the regulated sectors to ensure that the detail of this Directive meets our needs and does not impose additional costs on tissue establishments without sufficient evidence of benefit. For example, we have been able to resist the introduction of an across the board requirement for all laboratories to have Grade A (sterile) air quality standards. UK stakeholders have indicated that they are generally happy with the content, considering that it does not impose any unreasonable or unjustifiable burdens.

SCRUTINY HISTORY

The European Commission first published its proposal for Directive 2004/23/EC in June 2002 (COM (2002) 319 final). An accompanying Explanatory Memorandum and Initial Regulatory Impact Assessment were provided by the Department of Health on 8 July 2002. They were cleared by the House of Commons and House of Lords European Scrutiny Committees on 16 October and 30 October 2002 respectively.

The Department of Health wrote again on 19 May 2003 informing the Joint Parliamentary European Scrutiny Committees of the results of First Reading. An Explanatory Memorandum was sent on 13 June 2003 informing the Committees of the political agreement reached at the June Health Council. The House of Lords cleared scrutiny on 17 June 2003 but the House of Commons noted that in light of the significant additional costs that could arise as a result of the inclusion of mature gametes within the scope of the draft Directive, that they would hold the document under scrutiny pending receipt of a further Regulatory Impact Assessment.

In light of concerns express by the European Scrutiny Committee in July, Ministers wrote on 2 October 2003 outlining the current status of the Directive and enclosing a revised Regulatory Impact Assessment, the implications of which were debated in the House of Commons on 12 November when scrutiny was cleared. On 28 January 2004, we wrote to inform you that the Directive had completed its Second Reading in the European Parliament and in April 2004 that the Directive have been adopted by Health Council. I wrote again on 28 June this year to update you on progress in implementing the Directive and the likely costs.

8 November 2006
EDUCATION AND YOUTH COUNCIL, NOVEMBER 2006

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

I am writing to inform you of the agenda for the next Council meeting, which will take place in Brussels on 13–14 November.

Summary

Please find below details on the agenda items relevant to Culture and Audiovisual (Items 3 to 6 and 12 a to f).

Detail

Item 3


The Council hope to agree a general approach on the TVWF proposal. In effect agreement would mean that the Council as a whole agreed the existing text as the basis for discussion between the Council and the European Parliament during the German Presidency.

Item 4

Draft Council conclusions on the digitisation and online accessibility of cultural material, and digital preservation.

The Council is expected to adopt the draft Council Conclusions on digitisation.

Item 5

European Capital of Culture


(b) Draft Council Decision appointing the two members of the selection panel in the context of the Community action “European Capital of Culture”.

Item 6

Council work plan for culture 2005–06—Economy of culture in Europe

This will involve an exchange of views on a number of questions relating to a recent study on the “Economy of Culture in Europe”.

Items 12 a–f

These are all points of information from the Presidency, Commission or other Member States’ delegations. They relate to:

(a) Council work plan in the field of culture 2005–06

(i) Mobility Collections (information from the Presidency);

(ii) Extension of the Work plan 2005–06 until 31 December 2007 (information from the Presidency);

(b) European Heritage Label (information from Greece);

(c) EU-Russia Expert meeting on the implementation of the culture road map of the Fourth common space (information from the Presidency);

(d) Nomination of Guimarães as Portuguese European Capital of Culture 2012 (information from Portugal);
(e) Candidature of Wroclaw for the organisation of the Expo 2012 world exhibition (information from Poland); and

(f) Results of the European Cultural Meetings Europe of Neighbours: New Perspectives in Lublin (12–13 October 2006) (information from Poland).

We will ensure that the outcomes of the Council meeting are reported to the Committees in due course.

8 November 2006

Letter from Bill Rammell MP, Minister of State for Lifelong Learning, Further and Higher Education, Department for Education and Skills to the Chairman

I am writing to confirm the items for discussion at the Education and Youth Council on 13–14 November. It is expected that Peter Peacock, Minister for Education and Young People, Scottish Executive, will represent the UK at Youth Council, and I will represent the UK at Education Council. Anne Lambert, UK Deputy Permanent Representative to the EU, will attend both Councils.

The agenda for Youth Council on 13 November is quite light. Ministers will have an exchange of views on “Better understanding and knowledge of youth”, for which the UK will table a paper. The draft Resolution on implementing common objectives for young people to promote their active European citizenship has been removed from the formal Council agenda, but may be adopted as an A point. The UK is content with the Resolution.

On 14 November, the Education Council will be asked to agree conclusions on the future priorities for enhanced cooperation on Vocational Education and Training, and on efficiency and equity in education and training. The UK supports both of these draft conclusions. A discussion is expected on the subject of efficiency and equity, and we will outline our domestic priorities in this area, discussing either the Government’s Childcare Strategy and Sure Start and/or the importance of diversifying funding sources for higher education.

Ministers will be asked to agree a General Approach on the Recommendation to establish the European Qualifications Framework for lifelong learning (EQF). No significant discussion of this issue is expected. The UK fully supports this proposal and believes it will be a practical way to facilitate the mobility of learners and workers between Member States.

Following discussion of the above issues there will be an exchange of views on modernising higher education in Europe, including how the proposed European Institute of Technology can be used to increase competitiveness and innovation.

The UK’s intervention will focus on increasing links between Higher Education and business and the importance of peer learning, on which we will call for further sharing of good practice. The UK will be supportive of the Commission’s analysis of the challenges facing Higher Education systems in Europe and I will highlight the importance of Member States implementing reform. I will be clear that the EIT is just one element of the modernisation of Higher Education, but will support the concept of the EIT, whilst making it clear that the budget must provide value for money.

Following the Council on 13 November there will be an informal meeting of Ministers to discuss the reform of the European Schools.

10 November 2006

EDUCATION AND YOUTH COUNCIL, FEBRUARY 2007

Letter from Bill Rammell MP, Minister of State for Lifelong Learning, Further and Higher Education, Department for Education and Skills to the Chairman

I am writing to confirm the items for discussion at the Education and Youth Council on 16 February. Anne Lambert, Deputy Permanent Representative to the EU, will attend both Councils.

The agenda for the meeting is particularly light. During Education Council, Ministers will be asked to agree the contribution of the Education Council to the Spring European Council, and the text is expected to be adopted without discussion. The UK is content with the text.

There will be an exchange of views on “Looking beyond 2010—developing the ‘Education and Training 2010’ work programme”. Here, the UK will intervene in order to highlight common priorities for the period after 2010, focusing on improving the basic and intermediate skills levels of the European workforce. We will stress the need for Education Ministers to position themselves firmly within the Lisbon process, and take greater
ownership over the skills debate within Europe. Finally, we shall call for the Commission to review the priorities and working practices of Education Council.

During Youth Council, Ministers will be asked to agree the contribution of the Council (in the field of youth policy) to the Spring European Council on the implementation of the European Pact for Youth. Again, this text is expected to be adopted without discussion. The UK is content with the document.

Finally, there will be an exchange of views on a reflection paper on the future perspectives for European Youth policy. Here, the UK will intervene to state that youth policy is best taken forward within the current Lisbon process and Open Method of Coordination, and will oppose suggestions to set up separate parallel arrangements to deal with youth matters.

12 February 2007

EMPLOYMENT, SOCIAL POLICY, HEALTH AND CONSUMER AFFAIRS COUNCIL,
NOVEMBER 2006

Letter from Rt Hon Rosie Winterton MP, Minister of State for Health Services, Department of Health
to the Chairman

I am writing to inform you of the key issues on the agenda for the Health part of the Employment, Social Policy, Health and Consumer Affairs Council, which will be on 30 November.

Items on the main agenda are: the Amended proposal for a Decision of the European Parliament and of the Council establishing a second Programme of Community action in the field of Health (2007–13); Health in All Policies; The EU strategy to reduce alcohol related harm; International Health Regulations; and Follow-up to the high level reflection process on patient mobility and healthcare developments in the EU.

The Presidency are aiming for political agreement on the Programme of Community action in the field of Health (2007–13). The Government fully supports the revised proposal (which has been cleared from Commons Scrutiny and is due to be considered by the Lords on 23 November).

Ministers will be asked to adopt draft Council Conclusions on Health in All Policies and on Alcohol Related Harm. The UK is content with the Conclusions as drafted. There will also be a policy debate on The EU strategy to reduce alcohol related harm, based on the Commission’s recent Communication. The UK supports the Communication, which complements our national work in this area.

On the International Health Regulations (IHR), there will be an exchange of views on the Commission’s Communication on the role of the community in supporting implementation of the IHR. The Presidency will ask Ministers to underline the need for further clarification from the Commission of their proposals, and discussion with Member States, before any agreement is reached on a Community role. The UK support the Presidency’s view.

The item on Follow-up to the high level reflection process on patient mobility is intended to give Ministers a chance to exchange views on the work of the Commission’s High Level Group on Health Services and Medical Care. The UK supports the Group’s work, and considers it an important forum for non-legislative collaboration between health systems.


There will be information from the Commission on the Pharmaceutical Forum (part of the G10 strategy on pharmaceuticals); on actions to implement the Commission communication on combating HIV/AIDS; and on the consultation on the Green Paper on Mental Health. There will be information from the Presidency on their July Ministerial informal on “Health in the World of Work” and joint information from the Commission and the Presidency on Pandemic Influenza.

On the eve of the Council, the Commissioner for Health and Consumer Protection, Markos Kyprianou, will host an initial exchange of views with Health Ministers on the Communication from the Commission regarding Community action on health services.

15 November 2006
EU CONSUMER POLICY STRATEGY 2007–2013 (7503/07)

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

Your Explanatory Memorandum on the EU Consumer Policy Strategy 2007–13 was considered by Sub-Committee G (Social Policy and Consumer Affairs) at its meeting of 26 April 2007.

We broadly agree with the priorities highlighted by the Commission. The one area that causes us some concern is the priority on educating consumers. We would be grateful for your clarification of the competence of the Commission in encouraging the development of consumer issues in both adult education and higher education courses. Furthermore, the Commission suggests that the Europa School Diary may be a useful forum through which to educate young consumers. We would be interested in any information you may have on the extent to which the Europa School Diary has penetrated UK schools, and we would also appreciate your view on whether this is indeed an appropriate forum to achieve such an objective.

You note in your EM that you are looking forward to the publication of the Commission’s proposals on a revised Timeshare Directive in the coming months. We would appreciate any guidance that you are able to give on the likely timetable for publication of these proposals.

We are content to release the Communication from scrutiny and look forward to your comments on the above points.

27 April 2007

EUROPE FREE FROM TOBACCO SMOKE (5899/07)

Letter from the Chairman to Caroline Flint MP, Minister of State for Public Health, Department of Health

Your Explanatory Memorandum (EM) on the above Green Paper was considered by Sub-Committee G at its meeting of 8 March 2007.

We have some sympathy with the third option proposed by the Commission—the Open Method of Co-ordination—as this would permit the UK to share its own legislative experiences with other Member States in a non-legislative forum.

With regard to the possibility of binding legislation, we agree that it would be important to verify that any proposal falls within the competence of the Community and that it does not impact negatively upon the legislation in force throughout the United Kingdom.

Under the “legal basis” section of your EM, you quote a passage from the Commission Green Paper stating that the exact legal basis for legislation in this area cannot yet be determined. While we understand that these proposals are only at the consultation stage, we do find it unacceptable that so little information is provided on this important point. We would welcome your view as to the Treaty Articles which would be relevant as the basis for legislation in this area; and for your assessment of their limitations for this purpose.

We are content to release the Green Paper from scrutiny but would like to be kept informed both about the legal point we have raised above, and about the outcome of the Commission’s consultation.

8 March 2007

Letter from Caroline Flint MP to the Chairman

Thank you for your letter of 8 March 2007 following your Committee’s consideration of the Explanatory Memorandum for the above document dated 14 February 2007.

You specifically asked about the Treaty Articles which would be relevant as the basis for legislation in this area; and for my assessment of their limitations for this purpose.

The Department of Health is currently drafting a response for the Government and is currently in the process of consulting with lawyers, other Government Departments and the Devolved Administrations. The Department will be submitting a response to the Green Paper in advance of the 1 May deadline and I propose that I write again on the issues you have raised once I am able to appraise you on the Government’s position. I will also undertake to keep the Committee informed of any outcomes from the consultation.

22 March 2007
EUROPEAN CREDIT SYSTEM FOR VOCATIONAL EDUCATION AND TRAINING (ECVET) (15289/06)

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

Thank you for your letter of 19 December 2006 which was discussed by EU Sub-Committee G at its meeting on 25 January.

We note that, while you have some reservations about the need for the ECVET system, you support the process of consultation set out in the Commission document. We also welcome this wide consultation with stakeholders. A particular point we would wish to emphasise, is the desirability that the ECVET system should provide for recognition that the ability to communicate in a foreign language is often a necessary part of the overall skills needed to apply training effectively in countries other than that of a person’s maternal tongue.

We would be grateful if you could send us a copy of the UK response to the Commission document when this is ready, and let us know if, and when, concrete proposals for an ECVET system are likely to be published. If they are, we would expect them to be subject to a separate process of scrutiny.

In the meantime, we are content to clear this item from scrutiny.

26 January 2007

EUROPEAN EDUCATION AND TRAINING SYSTEMS (12677/06)

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

Your Explanatory Memorandum dated 3 October 2006 was considered by Sub-Committee G on 2 November.

We note your view that the content of the Communication is clear and useful, and that the UK already has policies in place to promote educational equity in the four areas covered.

We share your concern that the Communication reiterates the Commission’s assertion that there is a need for a Higher Education spending target of 2% of GDP, and we welcome the information that the UK, along with a number of other Member States, has resisted this. On the basis that this will continue to be the position, we are content to release this document from scrutiny.

3 November 2006

EUROPEAN GLOBALISATION ADJUSTMENT FUND (EGF) (7301/06)

Letter from the Chairman to James Plaskitt MP, Parliamentary Under-Secretary of State, Department for Work and Pensions

Thank you for your letter dated 21 July 2006 which did not reach us in time to be considered before Parliament rose before the Summer Recess. It was considered by Sub-Committee G on 12 October.

We are grateful to you for reiterating the Government’s position and note that negotiations are continuing in preparation for the possibility of political agreement at the December Employment Council.

We have already made our views clear in my letter to you dated 12 May 2006 and will look to you to continue to bear those considerations in mind as negotiations proceed. That being so, we do not want to go into the details at this stage. On the other hand, we note that one element of the intervention criteria is that there should be a minimum of 1,000 job losses in any given company or sector. We understand that this is causing some understandable difficulties for smaller Member States and suggest that it might be worth considering whether that it would be fairer if the requirement were to be expressed as a percentage of local or sectoral employment levels.

We will continue to retain the document under scrutiny and must ask you to ensure that we are given a full report on the state of negotiations in good time before decisions are needed at the December Council.

12 October 2006

9 Refers to signed Explanatory Memorandum from Minister dated 19 December 2006.
Letter from James Plaskitt MP to the Chairman

I wrote to both Scrutiny Committees in March of this year. My Explanatory Memorandum (EM) outlined the content of the Commission’s proposed regulation creating the European Globalisation Fund (EGF) and set out the UK position. In response you requested an update on negotiations prior to parliamentary summer recess, which I provided. In addition at the start of July I wrote to inform you that the proposal’s financial statement had been revised and we were examining its content closely. I provided a further update in early October of my detailed objectives for the remainder of negotiations.

This letter explains the positive changes the UK has been able to secure to the Commission text creating the EGF and requests that you release the proposal from scrutiny in advance of the December Employment, Social Policy, Health and Consumer Affairs Council (ESPHCA) where the dossier is listed for political agreement.

The Finnish presidency has a mandate from the Council to try and achieve a first reading deal with the European Parliament (EP) in advance of ESPHCA. Discussions between the Presidency and the Parliament are ongoing but are not focused on altering parts of the text important to the UK. Therefore, I am content that the EGF text as it now stands achieves the UK negotiating aims as laid out in the EM and my subsequent updates to the Scrutiny Committees.

The UK’s overall negotiating objectives outlined in my EM were:

— To ensure that measures supported under the EGF did not undermine existing national policies or overlap with other European Union funding streams such as the Structural and Cohesion Funds. The UK has defended language in the Commission proposal to ensure Member States (as part of the application process (article 5(d))) provide information on the complementarity of actions undertaken by EGF with those financed by structural funds. There is also a further safeguard in article 6.5 ensuring EGF actions do not also receive money from other community financial instruments.

— To ensure that the intervention criteria, funding and monitoring arrangements are sufficiently well defined so as to ensure that implementation of the EGF is consistent with the original conception of the fund agreed to at the Hampton Court Informal and the December 2005 Council. I am happy that the intervention criteria are clear, fair and will target EGF actions specifically towards those workers most affected by sudden, significant and unforeseeable shocks resulting from globalisation. I have examined the financial statement provisions and I am content that the commitments proposed are in-line with those in the Inter-Institutional Agreement.

Our detailed priority areas for amendment in negotiations were:

— The removal of all wage subsidies and in work income supplements from the eligible actions. The UK has succeeded in the removal of the wording on in work income supplements. The emphasis in this article is now firmly on funding active labour market measures designed at getting people made redundant back into work.

— To continue to argue that the number of redundancies required to trigger the fund in the intervention criteria be set at a number consistent with the funds objectives to focus on significant shocks. The UK came to agreement at working group and COREPER level that a sufficiently high number was 1,000 redundancies and that this figure needed to be stated in both article 2(a) and (b).

— To argue that the number of months that the redundancies have to occur (stated in the intervention criteria) should be low enough to indicate a sudden and unforeseeable shock. The 1,000 redundancies must occur over a four month period in article 2(a) and a nine month period in 2(b). The slightly longer period in article 2(b) reflects the likelihood that redundancies across a number of small and medium size enterprises may occur more gradually as the ripple effect of a single global shock hits individual businesses across a sector.

We also pursued these secondary objectives:

— Reduce the need for a Safeguard Clause in the intervention criteria (which was presented as part of a compromise proposal), of this is unavoidable, ensure that the circumstances in which it could be applied were clearly defined. I noted the point of concern you raised in your correspondence of 12 October regarding smaller member states access to the fund. The safeguard clause (now included as part of article 2) will ensure that the Commission can use a degree of discretion towards bids that do not quite meet the criteria laid out in 2(a) and (b), up to 15% of the fund will be payable in this way. This should ensure smaller member states can access the fund if they have a redundancy linked to a global shock that has significant impact on their labour market but does not quite meet the criteria.
— That there is no annual review of the EGF in 2008. The Commission are committed to an annual review in 2008 to satisfy themselves the fund is working effectively.

— A requirement that applications to the fund must rigorously demonstrate that there is a direct link between the sudden, significant and unforeseeable global shock. The UK supported language in article 5 which requires as part of the application process that the Member State provide a “reasoned analysis of the link between the planned redundancies and the major structural changes in world trade patterns”. The intervention criteria also clearly define the circumstances in which the redundancies must occur.

In addition to these changes the UK has supported calls for the inclusion of an end date for the fund. This will mean EGF must be renegotiated as part of the wider Financial Perspectives in 2013. The inclusion of an expiry date is consistent with other Structural and Cohesion Funds.

I believe the UK has achieved its principle aims for negotiations on the EGF regulation and I would like to support the proposal when it comes to ESPHCA in December. I therefore request the document be released to allow the UK to lift its Parliamentary Scrutiny reserve at the Council.

Unfortunately the European Parliament will not vote on the EGF text until 29 November immediately before ESPHCA. I will forward the compromise text on as soon as I have it but the final version of the regulation may not be available in advance of the Council. There should be no dramatic changes between the document for agreement at EP and the text to be agreed at ESPHCA a day later.

I will make the final text of the regulation available to the Committee at the earliest possible opportunity once I have received it from the Commission.

16 November 2006

Letter from the Chairman to James Plaskitt MP

Thank you for your letter of 16 November which was considered by Sub Committee G at its meeting of 23 November.

The Committee notes that its concerns in relation to the potential impact upon smaller Member States of the 1,000 redundancies minimum threshold have been allayed by the agreement brokered between the European Parliament and the Council. Equally, we are glad that the wording of the Regulation is such that access to funds must be well reasoned and complementary to existing funding sources.

Given that the agreement reached appears to be a balanced one and it is important that the Fund be operational as from 1 January 2007, we are releasing the dossier from scrutiny and look forward to receiving the final text of the Regulation from you at the earliest possible opportunity.

23 November 2006

EUROPEAN INSTITUTE OF TECHNOLOGY (10361/06, 14871/06)

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

Thank you for your letter dated 25 July 200612 which was received too late for consideration before Parliament rose for the Summer Recess. It was considered by Sub-Committee G on 26 October, together with the relevant reference to the EIT in Geoff Hoon’s letter dated 20 July 200613 to me following the oral evidence which he gave to the Select Committee on 13 July.

We note what you and Geoff Hoon have said about the Government’s present attitude to the EIT and are reassured to see that the Government are continuing to consult widely and question rigorously and will bear in mind the concerns raised in my letter of 14 July and earlier correspondence.

We are aware that the Commission has just issued a formal Proposal on the EIT. At first glance, we are interested to see that the Commission now seem to have a more modest proposition in mind. But we will naturally want to consider carefully whether this is likely to meet the desired objectives of making the most of European research potential and bringing together the best collective expertise of European higher education, research and innovation in a cost-effective way that does not duplicate or undermine existing research activities.

We look forward to examining your Explanatory Memorandum about the Proposal. When we have done so, we will let you know whether we wish to carry out an Inquiry. In the meantime we will continue to hold the current Communication (reference 10461/06) under scrutiny.

31 October 2006

Letter from the Chairman to Bill Rammell MP

Thank you for your Explanatory Memorandum (14871/06) of 22 November. This was considered by Sub-Committee G at its meeting on 7 December.

We share the general agreement among stakeholders about the Commission’s identification of the European Union’s relative weakness, compared to its main international competitors, in applying knowledge and research to innovation in order to enhance business activity and jobs.

However, we are still far from convinced that there is a need for such a major initiative by the European Commission in this area. The latest proposal represents a fundamental shift away from the concept put forward originally—of the European Institute of Technology (EIT) as a new physical entity in Europe. This shift is welcome to us because we felt that the earlier concept would actually be likely to damage the capacity of existing universities to collaborate with private industry and others in order to help to secure commercial opportunities from knowledge and research.

The proposal now put forward, however, does look to us very much like a bureaucratic solution designed, against the background of criticism of the previous proposal, to keep the EIT concept alive in some form. Our grave concern is that, in practice, the model put forward would cost a great deal of money and would be largely ineffective.

We would be grateful therefore to hear the Government’s views about why an EIT is needed at all and why it should be supported.

Moving on, we would also like to have your views on how to gain some value, and to minimise the damage, from the establishment of the EIT, if this becomes inevitable. Our specific concerns relate to the concept, strategic direction and funding of the EIT; and to its proposed creation of EIT labelled degrees.

The Concept of the EIT

While the move away from a physical entity for the EIT, towards a more virtual and networked approach is welcome, we are not convinced that such a resource intensive solution would be the most effective way of addressing the problem that has been identified. We would welcome your views as to whether a lighter touch approach might be more effective—designed to build on and help the many networks that have already been established between universities and business for advancing technological innovation.

The EIT’s Strategic Direction

We share the Government’s view that, if an EIT is set up, it would be important to strike an appropriate balance between “top-down” strategic guidance and monitoring undertaken by the proposed Governing Board and “bottom-up” flexibility and autonomy for the KICs. It seems to us, however, that in practice it might be quite difficult to find an organisational model that allowed for this under the arrangements set out in the Commission’s proposal. The “lighter touch” approach in which we are interested would give greater weight to the KIC’s priorities. Please could you let us have your views about whether this would be in the direction of balance that the Government would favour.

The EIT’s Awarding of Degrees

We are unconvinced that the awarding of EIT degrees would help to meet the desirable aims that the Commission has identified; and we have concerns about the quality control arrangements for such degrees if they were introduced. We therefore share the Government’s view that degree-awarding powers should remain the preserve of individual institutions and the systems of Member States, and not under the central control of the EIT or any potential Governing Board.

Please could you explain though why, and in what circumstances, the Government would support the notion of encouraging universities located in different Member States to award joint degrees. We would also welcome your views on the idea of postponing consideration of the issue of awarding degrees for a period until the EIT has had time first to build a critical mass and to establish its reputation.
**The EIT’s Funding**

We share the concerns of the Government about the large scale of funding envisaged for the EIT by the Commission—€2.37 billion (c £1.60 billion) over the period 2007–13. You state that there is a current lack of justification for the size of the budget envisaged and that no break down has been provided of what the funds are likely to be spent on. Moreover, you say it is unclear where the funding would come from and question: to what extent Member States would be expected to contribute outside their EC Budget contributions; how market funding would be attracted; and what might be the impact on other Community budgetary priorities.

We encourage the Government to pursue these EIT funding issues vigorously and we ask you to let us know of any clarification of them which is provided by the Commission. We would also welcome your views on whether an alternative, much lower cost EIT proposal, might be as, or more, effective than what is currently proposed. If so, please would you confirm that the Government will press the Commission to put forward such an alternative proposal.

12 December 2006

**Letter from the Chairman to Bill Rammell MP**

My letter of 12 December 2006 explained that we are retaining under scrutiny the Commission document 14871/06 “Proposal for a Regulation establishing the European Institute of Technology (EIT)”. As part of the process of gathering information for that purpose, this is to inform you that EU Sub-Committee G will be hearing evidence, as a public broadcast session, at 10 am on Thursday 22 February, from Baroness Warwick (Chief Executive) and Mr Chris Hale (Policy Adviser) of the organisation Universities UK.

Since the document 14871/06 setting out the proposed Regulation supersedes the earlier Commission Communication on the EIT 10361/06, we now clear the earlier item from scrutiny.

29 January 2007

**Letter from Bill Rammell MP to the Chairman**

Thank you for your letter of 12 December 2006 regarding the proposal to establish the EIT, and for your Committee’s comments. I apologise for the delay in replying to you.

The Government believes that the EIT could potentially provide a means of strengthening Europe’s competitiveness and capacity to innovate, part of Europe’s ongoing drive in the context of the Lisbon agenda. If framed in the right way, the EIT could bring together the three sides of the “knowledge triangle” (education, research and innovation) in a manner not accomplished before, and provide a new, clear focus on innovation and knowledge transfer. Existing instruments tend to join up two of the three sides, and so the EIT would be unique in bringing key actors together from all three communities. The EIT model would be based on a series of partnerships, and could potentially act as a catalyst in generating a “critical mass” of innovation output. It could potentially achieve a critical mass of innovation output, which would be helpful in strengthening EU competitiveness.

Though the Government can see the potential for benefit, any future European Institute of Technology needs to have a clear focus and purpose. Furthermore, the Government shares broadly similar concerns to those raised in your letter and in the House of Commons European Standing Committee debate on this dossier. My officials continue to engage constructively with counterparts in the European Commission and in other Member States to ensure that these issues are considered carefully.

The EIT needs to add clear value in its own right, and complement the existing range of EU instruments and initiatives in the field of innovation and research, such as the Seventh Framework Programme and the European Research Council, without unnecessary duplication or overlap.

A new initiative of this nature requires a clearly identifiable role and purpose, which the Government will seek to clarify in the course of ongoing negotiations.

I agree with you that the EIT needs to be as light-touch and unbureaucratic as possible, and should function in a bottom-up manner. The Knowledge and Innovation Communities (KICs) should be accorded as much autonomy as possible. Furthermore, a combination of high-level strategic direction for the EIT and a bottom-up functioning of the KICs would allow them the freedom to achieve positive results. This should be balanced carefully with appropriate levels of transparency, quality assurance and accountability for both KICs and the Governing Board of the EIT.

Education is one of the three sides of what is known as the “knowledge triangle”, and as such will have a key role in the EIT’s operation. However, it is crucial that the systems and institutions of the Member States maintain their competences over the awarding of degrees and qualifications. While degree-awarding powers
should remain the preserve of individual institutions and the systems of Member States, and not under the
central control of the EIT or its Governing Board, the Government supports the notion of encouraging
different institutions in the same Knowledge and Innovation Community to award joint degrees, where
appropriate.

The question of funding remains the Government’s primary concern. The Commission has given very little
justification for such a large budget and has provided no obvious value-for-money case. Furthermore, the EIT
was not foreseen in the 2007–13 Financial Perspective negotiations. The Commission proposes to fund the
operational costs of the EIT out of the margin of Budget Heading 1A, which the Government firmly believes
goes against the principle of budget discipline. It is also likely that the EIT would impact on UK priorities in
Heading 1A such as the Seventh R&D Framework Programme (FP7), as Knowledge and Innovation
Communities will be encouraged to bid competitively for funds from such programmes. In addition, the
Commission envisage that a substantial part of the financing for the EIT will come from outside the
Community budget, for instance from universities and business, although stakeholders have so far expressed
only limited interest in doing so.

In view of the above concerns, and because the EIT model is untested, the Government considers that there
is some merit in your suggestion of a more gradual launch of the EIT with consequently lower liability for the
Community budget during the period of the current Financial Perspective. I assure you that we continue to
engage proactively to seek further clarification from the Commission, and to discuss the options open to the
EU in terms of financing this project.

I hope that these points of clarification provide you and the Committee with the assurances you require at this
time. Negotiations remain at a very early stage, but as discussions in the Council of Ministers progress, I am
confident that the UK’s constructive stance will ensure that our issues are properly addressed.

I remain hopeful that the final legislative text will reflect this progress, and that a future European Institute of
Technology will be framed in such a way as to provide the best possible benefits to the EU and its Member
States as we strive to boost innovation and competitiveness as part of the Lisbon Agenda.

Finally, I should inform you that Malcolm Wicks, Minister for Science and Innovation at the DTI, will assume
the Government lead on this dossier from now on, given the focus of the proposal on innovation, and the
decision to formally negotiate and decide on this dossier at the Competitiveness Council.

1 February 2007

Letter from the Chairman to Malcolm Wicks MP, Minister for Science and Innovation,
Department of Trade and Industry

In his letter to me of 1 February 2007, Mr Bill Rammell MP explains that you have now taken over the
Government lead on the EIT dossier because of the focus of the proposal on innovation. Mr Rammell’s letter
and the transcript of his oral evidence to the House of Commons European Scrutiny Committee were
discussed by Sub-Committee G (Social Policy and Consumer Affairs) at their meeting on 8 March.

We are alarmed to learn from Mr Rammell’s letter that the need to fund the EIT was not foreseen in the
2007–13 Financial Perspective negotiations, and that to fund it would be likely to impact negatively on UK
priorities such as the Seventh R&D Framework Programme (FP7). Nevertheless, we are encouraged to learn
that the Government broadly shares our concerns about the Commission’s proposals. In particular, we
welcome the Government’s recognition of the merit of the suggestion we made that the establishment of the
EIT should be on the basis of a lower cost model than that currently proposed, and that its launch should be
more gradual.

As you may be aware, Sub-Committee G took evidence at its meeting of 22 February 2007 from Baroness
Warwick (CEO) and Mr Chris Hale (Policy Adviser) from the organisation Universities UK. The key issue
that came out of that session was the need for business involvement and the lack in the current proposals of
any clear incentives for business to wish to become involved. Mr Rammell makes the point in his letter that
it is envisaged that a substantial part of the financing for the EIT will come from various sources outside the
Community budget. He cites business as one of those sources although emphasises that stakeholders have so
far expressed only limited interest in providing finance. Could you expand on the extent to which the
Government has been in discussion with the business community about their interest in the EIT, and how
involved have business representatives been in making suggestions as to how the Proposal could be improved
to maximise commercial interest?
We note from Mr Rammell’s oral evidence to the House of Commons European Committee that the issue of the degree-awarding powers of the EIT appears to have been resolved. We would nevertheless be grateful if you could confirm this to be the case, and if you could outline how the award of degrees by individual higher education institutions, carrying the EIT brand, would work in practice.

Finally, Mr Rammell’s letter conveys the impression that the Government is supportive of the concept of the EIT, but would like to see changes in some of the details. However, when giving evidence to the House of Commons European Scrutiny Committee on 30 January, he stated with reference to the Proposal: “We are opposed to it as it stands now. We have made some progress in the right direction, and with further detail and clarification and with more movement it could be worth supporting, not least because of the knowledge transfer deficit”. Please could you clarify your own overall view of the Commission’s Proposals and the priorities you will have in negotiations for seeking changes in them?

In the meantime, we will retain this proposal under scrutiny. We look forward to your responses on the issues raised in this letter and to an update from you on the negotiations as they progress.

In view of the Sub-Committee’s close interest in the issues raised by this Commission proposal, I am writing also to Commissioner Figel raising our concerns. I am copying that letter to you.

8 March 2007

Letter from Malcolm Wicks MP to the Chairman

Thank you for your letter of 8 March, in which you requested an update on progress in the negotiation on the Commission proposal to establish a European Institute of Technology (EIT), and clarification of the government position on a number of key issues. Thank you also for allowing me sight of the letter you have sent to Commissioner Figel.

In terms of process, the German Presidency has indicated that it aims to make substantive progress on this dossier and meetings of an ad-hoc Council Working Group have been taking place. The Presidency plans to schedule an additional meeting of the Competitiveness Council on 27 June, at which it would hope to agree a general approach. In addition, EIT is likely to be discussed by Ministers at an informal Competitiveness Council taking place in Würzburg on 26–28 April. I understand that the relevant committee of the European Parliament (Industry, Research and Energy) aims to conclude its First Reading of the regulation by the end of July. As you may be aware, the conclusions of the Spring European Council asked the Council and European Parliament “...to conclude the thorough examination of the EIT Proposal in the first semester of 2007, with a view to taking a decision by the end of 2007”.

The Government believes that the UK should negotiate constructively, in support of the general objectives of the proposal, which are to contribute to European competitiveness and improved innovation performance by effectively integrating top-class education, research and innovation activities. However, the Government is seeking to develop a smaller-scale EIT, with a commensurately reduced budget in the early years, in order that lessons may be learned before embarking on any future expansion of the project in the next Financial Perspective (post-2013).

The Government’s key objectives are:

— Create an EIT which has the potential to add genuine value to Europe’s competitiveness and capacity to innovate, while not unhelpfully duplicating or cutting across existing European instruments in the research and innovation field (especially the Seventh Framework Programme);

— The level of funding made available from the EC Budget should be minimised during the 2007–13 Financial Perspective. Any alternative budgetary proposals should represent value for money and not pre-judge the 2008–09 Fundamental Budget Review;

— A light-touch governance regime, which allows maximum autonomy for the individual Knowledge and Innovation Communities (KICs) while maintaining appropriate transparency, quality assurance and accountability;

— No independent degree-awarding powers for the EIT, which should remain the preserve of individual institutions and the systems of Member States.

As regards the initial strategic priorities that the EIT/KICs might address, the Commission proposal delegates these decisions to a Governing Board. Nevertheless, President Barroso has already publicly indicated that climate change could be selected as a first priority. The Government view is that the field of climate change, by virtue of the scale of the global scale of the challenge, would fit well with UK priorities and should complement our own Energy Technologies Institute (ETI).
My officials continue to engage closely with a group of stakeholders on the EIT proposal, including the business community where our main channel of communication to date has been with the CBI. CBI have expressed broad agreement with the Government’s position, while highlighting the need for further detail on the practical operation of the EIT before business is likely to commit substantial resources to participating. Given the history of the lengthy bureaucratic procedures associated with European programmes, particularly the Framework Programme, business is understandably very keen that the administration of the EIT (and the Knowledge and Innovation Communities) should be as light-touch and efficient as possible. The current expectation is that once the legislation has been adopted, a Governing Board (with business representation) will be set up to define the detailed modalities (including for example IPR arrangements and procedures for selecting KICs), which will provide a further opportunity for engagement with business. In addition, the Presidency invited business representatives from across the EU to the Council Working Group’s examination of the proposal at an informal “hearing” on 5 March.

The Government continues to insist that the competence of Member States and individual higher education institutions in the awarding of degrees and diplomas is maintained, with no independent degree-awarding powers for the EIT itself. A number of other Member States share the UK Government’s view, and, as Bill Rammell said in the House of Commons European Standing Committee debate, the Government remains confident that the final proposal will reflect this position.

In practice, individual higher education institutions would continue to award their own qualifications, in many cases in collaboration with other institutions, for example in the awarding of joint degrees. Where applicable and where decided upon by these institutions, the use of an “EIT label” on the relevant qualifications may be used to signify that these qualifications were awarded in the framework of a Knowledge and Innovation Community.

I will continue to keep your Committee informed of the progress of this negotiation, and I hope that this clarification provides you and your Committee with further assurance of our position and our efforts to achieve a satisfactory outcome.

21 March 2007

Letter from the Chairman to Malcolm Wicks MP

Thank you for your letter of 21 March 2007, which was considered by Sub-Committee G at their meeting held on 26 April 2007.

We welcome your comments with regard to the degree-awarding powers of the EIT but we would appreciate further information from you on developments with regard to funding arrangements and the incentives for business to become involved.

As you will be aware, the Committee published an Interim Report on the EIT Proposal on 17 April.14 We plan to continue our examination of this Proposal and, as part of this work, we hope that you will be able to discuss these issues with us in the context of a public evidence session at one of Sub-Committee G’s meetings during June or early July. The Clerk to the Sub-Committee will contact your office to seek to arrange a date for this.

In the meantime, we would be grateful for your comments on the above points and for a broad update on progress in the light of the informal Competitiveness Council of 26–28 April. We shall continue to hold the proposal under scrutiny.

27 April 2007

EUROPEAN QUALIFICATIONS FRAMEWORK FOR LIFE-LONG LEARNING (11189/05, 12554/06)

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

Your Explanatory Memorandum (12554/06) dated 2 October was considered by Sub-Committee G on 2 November.

We note that Ministers are expected to be asked to agree to a General Approach at the Education Council on 14 November. We regret that these lengthy documents should have been produced by the Commission at such short notice and under cover of an Explanatory Memorandum which does not attempt to offer a detailed analysis of them.

We would also remind you that the previous document (Commission Staff Working document 11189/05) remains under scrutiny pending your reply to my letter to you dated 13 February 2006.15

You are also aware of the close interest which the Commission has shown in the development of the European Life-long Learning process, notably through our Report on the Integrated Action Programme for Life-long Learning (HL Paper 104-I, 2004–05 Session, published 14 April 2005).

On balance, we endorse the objectives which lie behind this initiative. We note the Government’s assurance that the Commission text poses few problems for the UK and that the Government hopes to be able to resolve those problems, notably the need to adapt to the circumstances of the four separate Devolved Education Administrations in the UK, in further negotiations.

We also agree with you that the 2011 target date seems unrealistic and hope you will be able to persuade the Commission and other Member States to accept a more sensible target.

In the circumstances, we are prepared to release the new documents from scrutiny to enable you to go along with a General Approach as proposed at the November Education Council. But we would be glad if, in reporting on the outcome of that you would also reply to the points raised in my letter dated 13 February and on any progress made in negotiations since the Education Committee meeting on 14 September mentioned in your EM.

3 November 2006

Letter from Bill Rammell MP to the Chairman

I am writing in response to your letter of 3 November, in which you requested an update on negotiations that have taken place on the above draft recommendation (12554/06) since the Education Committee meeting of 14 September and, also, to answer the specific questions raised in your letter of 13 February on the Commission Staff Working document (11189/05).

On 27–28 February 2006, a conference was held in Budapest in order to disseminate the results of the EQF consultation exercise, and to help formulate recommendations on how to take the initiative forward. The consultation revealed that the EQF was viewed as necessary and relevant, and, with further development of the descriptors and the strengthening of links with sectoral qualifications systems, had the potential to act as a drive for reform across Europe.

A General Approach on the Proposal for a Recommendation (12554/06) was drawn up by the Commission as a result of this consultation, and was agreed at EU Education Council on 14 November. In discussions at Education Committee prior to Council, UK officials negotiated the strengthening of links between the descriptors of the European Higher Education Area (“Dublin Descriptors”) and those of the EQF, ensuring greater compatibility between this initiative and the Bologna Process. Officials were not successful in getting the Dublin Descriptors included in the text as a separate Annex, as the Commission and other Member States argued this would make the EQF overly focussed on Higher Education qualifications, which the UK accepted. As other references to the Bologna Process and Dublin Descriptors have been strengthened, the UK was happy to accept the Presidency compromise text.

The Dublin Descriptors will remain the primary reference point for Higher Education and these descriptors correspond to levels 5–8 of the EQF. Importantly, the EQF levels 5–8 are wider that the Dublin Descriptors, which allows the EQF to take into account the higher levels of vocational qualifications, as well as Higher Education qualifications. This avoids duplication between the Dublin Descriptors and the EQF and promotes greater links between vocational and general education and training, something that the Government is keen to encourage. Domestically, our task now is to ensure continued communication and consultation with the Higher Education community across Europe to ensure that they are aware of this compatibility.

Other major changes (made with the support of the UK) include the transfer of the definitions on Page 16 of the original Proposal to a separate Annex and a later deadline for the implementation (now 2010 for relating national qualification systems to the EQF and 2012 for placing a reference to the appropriate EQF level on all new qualifications). UK officials successfully negotiated for a voluntary peer review process, as this will help to build mutual trust amongst Member States as regards the creation of transparent procedures for

mapping national qualifications systems to the EQF. The Commission agreed, and a reference to such a process has now been added to the text. Moreover, following a UK drafting suggestion, the text now reflects the possibility that the UK will require more than one national coordination centre.

I will, of course, keep the Committee informed about any developments relating to this initiative, as the General Approach will now form the basis for the ensuing negotiations with the European Parliament.

27 November 2006

Letter from the Chairman to Bill Rammell MP

Thank you for your letter of 27 November. This was considered by Sub-Committee G at its meeting on 11 January.

We note your report about the position reached at the 14 November Education Council meeting, when agreement was reached on the Recommendation (12554/06).

We are also grateful for the additional information provided in your letter which answers the specific questions, raised by Lord Grenfell in his letter of 13 February, about the Commission Staff Working document (11189/05). We now release that document from scrutiny.

Thank you for your offer to keep us informed about future developments.

11 January 2007

EUROPEAN QUALITY CHARTER FOR MOBILITY—KEY COMPETENCES FOR LIFE-LONG LEARNING (13190/06, 13192/06)

Letter from Bill Rammell MP, Minister of State for Lifelong Learning, Further and Higher Education, Department for Education and Skills to the Chairman

Following negotiations between the Council and the European Parliament, an agreement has been reached on these dossiers at first reading. The new texts reflect the amendments agreed with the European Parliament during this process. I attach the new documents for your Committee’s information and consideration (not printed).

The European Quality Charter for Mobility was previously considered by your committee as document 12639/05 and was cleared by your letter of 12 May 2006.16

The UK is content with the amended text. The EP changes consist mainly of technical amendments or warm words which change little of the substance. There is a welcome emphasis on equal opportunities and access.

The two areas which worried the UK were portability of student grants and loans and social security benefits and linguistic preparation. The text contains acceptable phrasing on these issues. For example “attention should be paid to the issue of portability”.

The Charter itself retains the “wherever possible” proviso in respect of language training. In the logistical support section it only says that this could include portability of government grants and loans from the country of origin to the host country.

The Recommendation on Key Competences was previously considered by your committee as document 13425/05 and was cleared by your letter of 12 May 2006.17

The European Parliament amendments do not really alter the substance of the document and the UK is content with the revised text. The amended document continues to emphasise that this is a reference tool for the Member States to use in their own systems. There is no added prescription.

There is now a reference to “a sense of initiative and entrepreneurship” and “social and civic competence” in the competence titles. The former reflects UK concerns about the narrow nature of just “entrepreneurship”.

We expect both of the new texts to be adopted in December, without further discussion in the Council.

3 November 2006

SOCIAL POLICY AND CONSUMER AFFAIRS (SUB-COMMITTEE G)

Letter from the Chairman to Bill Rammell MP

Sub Committee G considered the above documents and your accompanying letter dated 3 November at their meeting on 23 November.

We welcome the increased flexibility that has been secured in the texts. Noting that there are non-binding Recommendations, we are happy to release them from scrutiny in advance of their proposed adoption in Council.

23 November 2006

EUROPEAN YEAR OF INTERCULTURAL DIALOGUE 2008 (8596/06, 12559/06)

Letter from the Chairman to David Lammy MP, Minister for Culture, Department for Culture, Media and Sport

Thank you for your letter dated 18 July 2006 which arrived too late for consideration before the House rose for the Summer Recess. It was considered by Sub-Committee G on 12 October.

We are glad that we were able to help the Government to respond positively to the Austrian Presidency’s last-minute proposal for a General Approach at the Council meeting on 18 May and are grateful to you for reporting that the General Approach was agreed at that meeting.

You have acknowledged our keenness to ensure that full advantage is taken of the linkage between designation of Liverpool as a European Capital of Culture and the possible inclusion of Liverpool in the Maritime “Cities on the Edge” programme in 2008. You have also acknowledged our continuing concern over the administrative and budgetary arrangements. We are grateful to you for promising to keep us in touch with significant developments on all these aspects. Now that scrutiny has been released, we leave it to you to judge when it would be appropriate for you to write to us again about that.

12 October 2006

Letter from the Chairman to Shaun Woodward MP, Parliamentary Under-Secretary of State, Department for Culture, Media and Sport

Your Explanatory Memorandum (12559/06) dated 4 October was considered by Sub-Committee G on 2 November.

As you know, we have already cleared the original Proposal from scrutiny, although you have undertaken to keep us in touch with any significant developments on the administrative and budgetary arrangements, as well as the possible linkage between the designation of Liverpool as the European Capital of Culture and the inclusion of Liverpool in the Maritime “Cities on the Edge” programmes in 2008.

We note that the Government is content with the amendments proposed and hope that they will help to make the Year an effective and worthwhile exercise. You will recall, however, our earlier reservations about the vagueness of the concept and the need for sensitive interpretation of the objectives. We think that the latter is particularly important in view of the growing debate about multiculturalism and will look to the Government to ensure, through UK representation on the Advisory Committee that appropriate sensitivity, as well as the need for any projects to be sound and likely to have a significant impact, is taken fully into account.

We would also like to reemphasise the need for rigorous evaluation of the progress and outcome of the Year, as outlined in my letter to you dated 18 May.

On that basis, we are prepared to release the Amended Proposal from scrutiny but would be grateful if you would report the result of the Council meeting in due course.

3 November 2006

HEALTH AND CONSUMER PROTECTION STRATEGY (9905/06)

Letter from Rt Hon Rosie Winterton MP, Minister of State for Health Services, Department of Health to the Chairman

Thank you for your letter of 6 July 2006, further to my Explanatory Memorandum (EM) of 21 June. I am writing in response to the points raised in your letter and to update you on progress in negotiations on this dossier.

The Finnish Presidency have held several discussions in the Council’s Public Health Working Group over the summer. During the course of these, UK officials have agreed amendments:

— emphasising the importance of measuring the impact of work undertaken in relation to the programme objectives and the need for effective monitoring at project level (we do recognise, however, that some public health projects are difficult to evaluate in the short to medium term);

— highlighting the need for data on socio-economic factors and the health impact of other policies, within national constraints around availability; and

— clarifying that any further proposals for action arising from projects funded should respect the Council Conclusions of June 2006, which emphasise that while EU health systems share common values and principles, how these are implemented in practice is for Member States to decide.

In terms of timing, the Finnish Presidency are now keen to achieve political agreement on this dossier at the Health Council on 30 November. To this end they have held several trialogue discussions with the Commission and the European Parliament. The Parliament have indicated that they are broadly content with the revised proposal but would like:

— a further programme objective on major diseases. In practice they are likely to accept a compromise stating that other objectives (eg on promoting health) should contribute to the reduction of major disease. The Government is content with this; and

— a (very small) funding increase of around €3 million per year. The Government’s position will depend on the source of additional funds. Although we have no problem in principle with a small increase, funds must not be taken from other, already agreed, programmes or lead to an increase in overall EU budget ceilings agreed earlier this year.

I also enclose a copy of our Initial Regulatory Impact Assessment, which reflects consultation with stakeholders.

I hope that this update is helpful, and gives you the information you need to clear this proposal from Scrutiny.

17 October 2006

Annex A

INITIAL REGULATORY IMPACT ASSESSMENT

TITLE


Council Document: 9905/06.

PURPOSE AND INTENDED EFFECT

Objective

1. The Commission has set out three core objectives for this programme:

— Improve citizen’s health security including actions to:
  — protect citizens against health threats; and
  — improve citizen’s safety.

— Promote health for prosperity and solidarity including actions to:
  — foster healthy, active ageing and help bridge health inequalities; and
  — promote healthier ways of life by tackling health determinants.

— Generate and disseminate health knowledge including actions to:
  — exchange knowledge and best practice; and
  — collect, analyse and disseminate health information.
Background


3. The Commission’s original proposal combined public health and consumer protection. However, following objections from the European Parliament, the proposal has been split off into two separate programmes (on public health and consumer policy).

4. The budget for the public health programme is set at €365.6 million (compared to €1,203 million originally proposed by the Commission for the joint programme). Amounts available on an annual basis for operational expenditure on the programme are slightly below the current public health programme (approximately €47 million per year compared to €51 million in 2006).


6. The objectives of the current programme are to:
   - provide health information;
   - respond to health threats; and
   - promote health by addressing health determinants.

Rationale for intervention

7. Article 152 of the Treaty states that in order to promote the interests of the public and to ensure a high level of human health protection, the Community will take action to complement national policies towards improving public health, preventing human illness and diseases, and obviating sources of danger to human health. The Community shall encourage cooperation between Member States (and where necessary lend support to Member States’ action).

8. In its impact assessment, the Commission lists key areas of need where the EU can add value by complementing national action, facilitating exchange of expertise and best practice and co-ordinating action where appropriate (for example on health threats). These include:
   - health inequalities within and between Member States;
   - common challenges faced by Member States, such as how to promote policies that will tackle the growing burden of avoidable diseases;
   - the need to tackle global health threats (such as SARS and avian influenza); and
   - the potential for helpful collaboration between Member States on improving the quality and efficiency of health services.

9. Evidence from the UK and the EU that relates to the areas of need set out by the Commission is below:

Inequalities

In all EU countries with available data, rates of premature mortality are higher among those with lower levels of education, occupational class of income. These inequalities in mortality lead to substantial inequalities in life expectancy at birth (4–6 years among men, 2–4 years among women). In 2001, the inequality in life expectancy at birth by occupation class in England and Wales was 8.4 years among men and 4.5 years among women. Exchange of best practice at EU level in this area and action to reduce health inequalities is a key priority for the UK government.

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20 Health Inequalities: Europe in profile, Prof Dr Johan P Mackenbach, 2006 (commissioned by the UK Presidency of the EU).
Common challenges/avoidable diseases

1 in 5 children in EU Member States are overweight with 400,000 children becoming overweight every year. Obesity is directly linked to diseases including Diabetes. The EU wide average prevalence of Diabetes if 7.5% and this figure is set to increase to 8.9% by 2025.  

Lifestyle related ill health also has a negative effect on the economies of EU counties. In England, alcohol related conditions cause a productivity loss of £6.4 billion/year. National authorities in the EU-15 spend €135 billion every year on cardiovascular diseases.  

Member States can learn from each other in developing actions to combat these common challenges. For example, the North Karelia Project in eastern Finland was instrumental in reducing the amount of deaths by CHD amongst middle aged men by 83% through diet alterations.

Global health threats

Clearly, infectious diseases do not respect borders. Modelling work indicates that having built up over 2–4 weeks in a country of origin in Asia, it could taken as little as 2–4 weeks for pandemic influenza to spread to the UK. On the other hand effective surveillance (eg of which age groups are most effected) and sharing of information in the early stages of a pandemic could help countries respond more effectively once a pandemic has spread to their borders. Enhancing the capacity for collaboration across the EU, and with other international partners, is therefore key.

Collaboration between Member States health services

EU Member States face common challenges in the provision of health services. These include: demographic change and ageing populations; avoidable diseases (see above); rising costs and the need to ensure financial sustainability. In England, the number of people over 65 years living with long-term conditions is expected to double each decade. This poses a significant challenge for the NHS.

Learning from other Member States can add real value to national policies. For example, the Our health, our care, our say White Paper which set out the government’s strategy to help people live more independently in their own homes, including through having more local specialist care and developing community health facilities, was informed by the best practice of other European countries. (France carries out most follow-up outpatient appointments in community settings and Germany has developed polyclinics that provide specialist services locally).

Consultation

Within government

The UK’s position has been agreed with relevant Government departments, and with the Devolved Administrations.

Public consultation

The Commission’s impact assessment sets out that the proposed programme is based on the results of a consultation held by the Commission in July 2004, entitled “Enabling good health for all, a reflection process for a new EU health strategy”, with contributions from national authorities (including the UK), NGOs, universities, citizens and companies. It also used a range of other forums to consult Member States and other stakeholders.

The Department of Health also held a three month public consultation on the original proposal and on possible revisions, with responses from professional bodies/Royal Colleges as well as other stakeholders including Local Government.

21 Diabetes—the Policy Puzzle: Towards Benchmarking in the EU 25, Federation of European Nurse in Diabetes & International Diabetes Federation European Region.
23 Eurohealth volume 9, Spring 2003.
24 Successful prevention of non-communicable disease: 25 years experiences with North Karelia Project in Finland, World Health Organisation, 2002.
Overall, respondees were supportive of the public health objectives of the programme. There was a range of opinions on the right approach to prioritisation within a revised programme with a reduced budget, from the view that all of the proposed objectives in the original programme should be retained to the view that work on health promotion, disease prevention and tackling determinants is the key priority.

Respondees were supportive of collaboration between health systems, while recognising that these differ significantly between Member States. Other general points included the need for effective targeting of health promotion/prevention activities and to ensure that such activities were taken forward at the appropriate level (e.g., nationally, regionally, locally). [The revised proposal no longer contains a reference to EU wide awareness campaigns.]

**Options**

Options for the revised programme are:

- Do Nothing—do not negotiate, the most likely outcome is that the actions are accepted without UK influence;
- Support all the actions in the revised proposal;
- Support some of the actions/negotiate for a revised package; or
- Oppose all the proposed actions.

As outlined in our Explanatory Memorandum, the Government supported the objectives and actions in the original proposal, and particularly welcomed many of the Commission’s revisions, such as the increased focus on health inequalities. The Government is therefore supporting all the actions in the revised proposal.

**Actions under the Public Health programme**

Proposed actions under each heading of the revised proposal are summarised below.

**Protect citizens’ health security**

This includes work around monitoring and response to communicable and non-communicable health threats, including avian and pandemic influenza, through support for effective planning, surveillance, risk management and prevention as well as developing the capacity for Member States to collaborate effectively in a health emergency. It also includes some wider work on safety (including patient safety).

**Promote health to improve prosperity and solidarity**

This includes action on health inequalities, as well as to promote healthy ageing in the context of Europe’s demographic changes. The Commission is also keen to explore the impact of health on the broader issues of productivity and labour market participation under this heading. The work on tackling the determinants of health and on disease prevention is included here (including nutrition, physical activity and combating tobacco, alcohol and drugs).

**Generate and disseminate health knowledge**

This includes exchange of best practice between health systems and on other key issues, such as mental health. It also includes work to build on EU health data and information and to improve dissemination of information to consultation with EU citizens stakeholders and policy makers.

**Costs and Benefits**

The actions proposed under this objective will involve costs for the European commission, but will not impose direct costs on business, the voluntary sector or consumers. Clearly, some projects funded will seek to influence consumption patterns (for example of tobacco, alcohol, junk food etc) for health reasons which may in turn indirectly impact related businesses. However, this is in line with our national policies as set out in the Choosing Health White Paper.

UK based organisations are likely to benefit from funding to lead work under the programme’s objectives (the current public health programme has resulted in funding for the Health Protection Agency, University of Edinburgh and London School of Economics among others). Many more UK based organisations will benefit.
as partners collaborating in projects funded, gaining the opportunity to build knowledge and share best practice with others across the UE.

The Commission’s impact assessment notes wider potential benefits of these actions including:

- The economic impact of improving population health (according to a recent study, health improvement represented 11% of the causes of growth over a 25 year period in the EU 15) and productivity;
- National authorities better supported to effectively monitor and respond to health threats, and to co-operate across the EU in the event of a health emergency (such as an influenza pandemic);
- National health systems supported to combat major diseases and to provide cost-efficient and effective healthcare, through mutual collaboration and learning across countries; and
- A stronger voice base on the rationale for public health interventions.

EQUALITY
Reducing health inequalities is a key element of the proposed programme.

SMALL FIRMS IMPACT TEST
Not applicable to this proposal.

COMPETITION TEST
Not applicable to this proposal.

ENFORCEMENT, SANCTIONS AND MONITORING
The actions proposed by the Commission will not have enforcement and sanctions effects. The revised proposal sets out arrangements for monitoring, which have been strengthened following input from the European Parliament. These include provision for an external and independent evaluation mid-way through the programme and following its completion.

Letter from the Chairman to Rt Hon Rosie Winterton MP
Thank you for your letter of 17 October and the attached Initial Regulatory Impact Assessment. These were considered by the Sub-Committee on 23 November.

We note that the changes made to the previous version of the proposal, which were agreed in a Council Working Group over the summer, are satisfactory to the UK and that the revised proposals have general support from UK stakeholders.

We are therefore content to clear this document from scrutiny.

23 November 2006

HEALTH AND SAFETY OF WORKERS AT WORK (11810/06)

Letter from the Chairman to Lord Hunt of Kings Heath, Parliamentary Under-Secretary of State for Work and Pensions, Department for Work and Pensions
Your Explanatory Memorandum dated 11 September was considered by Sub-Committee on 2 November.

We note that the proposed Directive appears to be a sensible and cost-saving measure put forward under an appropriate legal base.

Just two points arise upon which we would appreciate some further information.

(a) We feel that the form of drafting of Article 2 of the draft Directive that “the structure of the report shall be defined by the Commission” does seem to leave matters rather more open-ended for the future than might be desirable, despite the provision that this would be done “in cooperation with the Advisory Committee on Safety and Health at Work”. Could a revised Article 2 be suggested that gives rather more assurance that an excessive reporting burden cannot be introduced in the future?

(b) We note that the Health and Safety Executive (HSE) are carefully considering the respective merits of the extension of the new Directive to three new risks relating respectively to asbestos, biological agents and carcinogens. We would be grateful to hear from you about the outcome of this study.

We will continue to retain this document under scrutiny pending your response to these two issues.

3 November 2006

Letter from Lord Hunt of Kings Heath to the Chairman

Thank you for your letter of 3 November 2006 on this proposed directive. I am pleased your Committee share the view that the proposed Directive is a sensible and cost-saving measure.

You have asked for further information on the drafting of Article 2 and the respective merits of the extension of the new directive to the asbestos, biological agents and carcinogens directives, and I will address each of these points in turn:

**Article 2 of the Draft Directive**

At the Social Questions Working Party (SQWP) meeting of 25 October the following amendments (in bold type below) to Articles 17(a)(1) and (2) of the Directive were agreed by Member States:

“**This single report will provide the opportunity to take stock of various aspects of the practical implementation of the Directives**".

“The structure of the report, **together with a questionnaire specifying its content**, shall be defined by the Commission, in cooperation with the Advisory Committee on Safety and Health at Work. It shall include a general part on the provisions of this Directive **dealing with the principles and common aspects applicable to all the Directives** referred to in paragraph 1. The general section will be complemented by specific chapters on the implementation of the individual Directives, **dealing with the aspects particular to each Directive**".

HMG considers that these amendments limit the scope of what is required in the report. The EC’s Advisory Committee on Safety and Health at Work is most unlikely to agree to the Commission significantly extending the reporting burden, especially given the better regulation stance of many Member States, particularly the UK, Denmark, The Netherlands, Germany and the Member States who joined in 2004.

In addition, an amendment has been proposed to Article 17(a)(4) that requires the Commission to report on the implementation of the Directives concerned within 36 months of the end of the five-year periods. This new requirement on the Commission commits them to evaluating the data received (which we support) to a deadline. It also places an additional burden on their own resources to produce this evaluation and, with this in mind, it is unlikely an excessive reporting burden will be made on Member States—because the larger the reports, the more work is required of the Commission to evaluate them.

**Extension of the Proposal to the Asbestos, Biological Agents and Carcinogens Directives**

As outlined in the Explanatory Memorandum, the respective merits of this extension to the asbestos, biological agents and carcinogens directives were given careful consideration.

Although the proposal extends the reporting obligations to these three directives, the proposed new arrangement will allow, for the first time, a comprehensive, across the board view of the whole EC health and safety acquis, at both Member State and EU level. It will facilitate a thorough examination of its impact, potential overlaps and an evaluation of its effectiveness. This in turn could flag up areas for further simplification and for the removal of unnecessary or duplicate administrative burdens. We will be able to look at the acquis strategically and possibly identify key themes for particular scrutiny. This will be aided by the addition of the annexes on the three additional directives.

Although this will mean there will be some additional costs to the HSE policy teams responsible for compiling these reports, there will be savings for those teams responsible for directives with existing reporting requirements.

The benefits fall chiefly on the governments, as authors of the reports, and representative groups such as TUC and CBI, as primary consultees of the reports, rather than businesses themselves. The fixed reporting cycle should ensure that the reports are all presented to the EC at the same time and the general section of the revised reporting structure will avoid the requirement to duplicate this information for each directive (as was previously required). Moreover, the preparation of the detailed annexes at the same point of time will bring economies of scale in extracting information from data files.
Therefore, on balance, the HSE believes the benefits of reporting on the three extra directives outweigh the additional costs.

I hope this letter addresses the Committee’s concerns and they will now be able to formally provide scrutiny clearance.

13 November 2006

Letter from the Chairman to Lord Hunt of Kings Heath

Thank you for your letter of 13 November, this was considered by Sub-Committee G on 30 November.

We are grateful for your direct and full replies dealing with the points raised in my letter of 3 November which related to: the extension of reporting arrangements to three additional risks; and the future arrangements for specifying the scope of reports.

On the basis of this information, we are now content to release this document from scrutiny.

6 December 2006

HEALTH THREATS AT EU LEVEL (15561/06)

Letter from the Chairman to Rt Hon Rosie Winterton MP, Minister of State for Health Services, Department of Health

Thank you for your Explanatory Memorandum of 4 December relating to Council Communication 15561/06—which proposes an extension of the mandate for the Health Security Committee (HSC). This was considered by Sub-Committee G at their meeting on 11 January.

We note that the proposed extended mandate for the HSC is of an interim nature, and that the position will be reviewed as part of the Commission’s overall review of the EU’s arrangements for health threats. We understand also that the UK is already collaborating with the HSC on work areas covered by the new mandate.

Against this background, we are content to release this document from scrutiny.

For our future background information it would be helpful please if you let us know who are the members of the HSC and the dates of their meetings during the past two years.

11 January 2007

Letter from Rt Hon Rosie Winterton MP to the Chairman

Thank you for your letter of 11 January confirming the release from scrutiny of the above Communication. You asked for details on the membership of the HSC and the dates of their meetings over the past two years.

As you may be aware, the HSC is comprised of high-level representatives of the Health Ministers of EU Member States authorised to take decisions and commitments with respect to preparedness planning and response in case of emergency. Given the sensitive and security-based nature of their work, it has not been possible to obtain agreement to the public disclosure of the names of the various Committee members.

Over the past two years, the Committee has met on the following dates:

— 16–17 February 2005;
— 18–19 April 2005;
— 5–6 October 2005;
— 23–24 March 2006;
— 13–14 June 2006;
— 3–4 October 2006; and

I am sorry that it has not been possible to provide you with a comprehensive response to your query, but I trust you will understand and appreciate the reasons for not doing so.

6 March 2007
i2010: DIGITAL LIBRARIES (12981/05)

Letter from David Lammy MP, Minister for Culture, Department for Culture, Media and Sport to the Chairman

I am sorry not to have responded to your letter of 24 November 2005 before now, but I am afraid that we can find no record here of having received your original request.

You have asked for reports on the outcome of the European Digital Library debate at the Education, Youth and Culture Council and our Presidency conference, which both took place last November; and for a summary of the UK response to the European Commission’s consultation.

OUTCOME OF EDUCATION, YOUTH AND CULTURE COUNCIL (14 NOVEMBER 2005)

The European Commission has not yet issued a formal note of last November’s Education, Youth and Culture Council. However, the draft minutes note that the Council held an exchange of views on the Communication from the Commission (12981/05), on the basis of a Presidency questionnaire (13392/2/05). Delegations welcomed the idea of a European Digital Library and mentioned existing and planned digitisation activities in their own countries which could contribute to this initiative. The debate focused on the need to ensure multilingualism and promote linguistic and cultural diversity, on the issue of protection of intellectual property rights and online accessibility and digital preservation.

OUTCOME OF UK CONference ON DIGITISATION AND E-LEARNING (15–18 NOVEMBER 2005, BRISTOL)

On 15 November 2005, as part of the UK Presidency programme, we hosted a conference about the European MICHAEL project, looking in particular at exploring ways of providing multi-lingual access to the cultural heritage online (including reports from projects in the UK and Europe); and considered ways of providing access to the digital cultural heritage for tourism, research and by the creative industries.

In the evening of 15 November, I launched a Dynamic Action Plan to make Europe’s cultural heritage more accessible through the internet. I am enclosing a copy of the Plan, which was produced by the National Representatives Group (NRG) (not printed). The NRG meets at least every six months and its activities include identifying and comparing digitisation practices, setting technical standards across Europe and developing best practice guidelines. The Plan sets out an important programme in providing diverse digital resources that support education, tourism and the creative industries, and will enable digital access by all citizens to the national, regional and local cultural heritage of Europe. Its objectives include overcoming the digital divide, and mobilising cultural institutions to co-ordinate and make best use of technologies.

On 16 November, the NRG held an “Inspiring eLearning” conference, which looked at the links between digitisation and e-learning. The conference showcased some developments in the UK, as well as those from across Europe and looked at some of the issues involved in the provision of e-learning materials.

The NRG met on 17 November. The meeting noted that the Dynamic Action Plan had been presented at the meeting of the Culture and Audio Visual Council on 14 November, and was subsequently formally launched in Bristol. The NRG looked at ways to implement the Plan, including agreeing to set up five working groups.

The NRG heard presentations on proposals for a European Digital Library from the NRG member for France, and from the Commission; it also heard presentations from the TEL Project (The European Library) and the DELOS Network of Excellence on Digital Libraries. The NRG discussed the i2010: Digital Libraries Communication and agreed to prepare a common response based on responses prepared by Member States.

SUMMARY OF UK RESPONSE TO i2010: DIGITAL LIBRARIES

Our response to the Commission’s i2010: digital Libraries Communication was submitted on 30 January 2006 and published on the DCMS website.

The response stressed that the Dynamic Action Plan and a European Digital Library complement each other, and that following the launch of the Plan we hoped that the NRG would have a key role to play in the implementation of a European Digital Library. We also noted that we consider the European Digital Library initiative should promote cultural identity as a whole by using materials from all cultural institutions, rather than just focusing on books and printed texts.

The response also addressed the issue of copyright. In particular, many stakeholders noted that it was important to involve copyright creators and their representatives in methods to increase access to content online.

Several stakeholders commented that they would like a clearer idea of what research and development is already being done, and how this fits with current work in individual Member States. Most of those consulted also endorsed the point made in the Communication that private sponsorship and public/private partnerships would be required to accelerate the current pace of digitisation initiatives.

Responses to the Communication have fed into a Recommendation, which the Commission announced at the end of August (see http://ec.europa.eu/information_society/activities/digital_libraries/index_en.htm). The Council will be discussing the Recommendation in November, and probably adopting conclusions.

The Commission has recently launched a further consultation on “Content Online in the Single Market”. The deadline for responses to this is 13 October 2006 and DCMS will be contributing to a UK Government response.

15 October 2006

Letter from the Chairman to David Lammy MP

Thank you for your letter of 15 October which provided the report we requested on the meetings which were held during the consultation on the Commission’s i2010: Digital Libraries initiative. This was considered by the Sub-Committee on 23 November.

We note that the Commission Recommendation—12352/06 on the digitisation and online accessibility of cultural material and digital preservation—was cleared from scrutiny in our 10 October Chairman’s sift. We therefore now release the previous Communication document 12981/05 from scrutiny.

23 November 2006

INJURY PREVENTION AND PROMOTION OF SAFETY (10938/06, 10950/06)

Letter from the Chairman to Caroline Flint MP, Parliamentary Under-Secretary of State for Public Health, Department of Health

Thank you for your letter dated 20 September 2006 which was considered by Sub-Committee G on 26 October.

We are grateful to you for the detailed response you have given to the questions posed in my letter to you dated 20 July and for promising to keep us abreast of further significant developments.

We note that Working Group discussions are under way and that an exchange of views has been provisionally scheduled for the November Health Council. We will therefore retain the documents under scrutiny and would welcome your progress report following the Council discussion.

27 October 2006

INSTITUTE FOR GENDER EQUALITY (9195/06)

Letter from the Chairman to Meg Munn MP, Deputy Minister for Women and Equality, Department for Communities and Local Government

Thank you for the copy of your letter of 9 November to Mrs Margaret Beckett MP. This was seen for information by Sub-Committee G on 23 November.

We are pleased to note that the Finnish Presidency has put forward a new proposal for a smaller management board for the proposed European Institute for Gender Equality, comprising representatives from 18 Member States rather than 25 as previously envisaged.

As you point out in your letter, this smaller board is in line with the recommendations set out in our Gender Institute Inquiry Report which we published earlier this year. We therefore support the Government’s intention to indicate agreement to the Presidency proposal.

May I take the opportunity to let you know that we are publishing another Report relating to this proposal on Thursday 30 November. This Supplementary Report records the events before and after the European Employment Council meeting of 1 June 2006, at which the UK voted for the Commission’s Gender Equality Institute Proposal. We will send you a copy of the Supplementary Report.

29 November 2006

Letter from Meg Munn MP to the Chairman

Thank you for your letter of 29 November in which you supported the UK proposed negotiating position on the European Gender Institute.

I am pleased to inform you that the Council and the European Parliament have adopted the regulation establishing the Institute on 19 December based on the UK proposed negotiating strategy for a middle-sized Management Board in which you have indicated your support.

January 2007

INTERNATIONAL HEALTH REGULATIONS (13501/06)

Letter from the Chairman to Caroline Flint MP, Minister of State for Public Health, Department of Health

At its meeting of 23 November 2006, Sub-Committee G considered the above document and your accompanying Explanatory Memorandum dated 23 October 2006.

We note that the IHR (2005) explicitly provide for co-operation between State parties to facilitate the application of the Regulations. We agree that it is appropriate to undertake co-operation where that would help speedy and effective application. It is clear that the Regulations do touch on policy areas pertinent to the Community and it is clear too that the Community already has certain mechanisms in place that could usefully be employed in these circumstances.

We do, however, have a number of concerns. The Commission is not precise in its communication with regard to the extent of Community competence in this area. Please could you set out the Government’s views on this matter? Second, is the Government aware of any Community involvement in the negotiations on the IHR (2005)? If so, by whom was the Community represented and on what legal basis? Finally, the Commission proposes that, on behalf of the Community, it draft, negotiate and sign an administrative Memorandum of Understanding with the WHO on the application of the IHR (2005). What competence does the Government consider the Commission has to negotiate and conclude such a Memorandum? Does the Government know what the Commission envisages would be contained within it?

We will retain the Communication under scrutiny, pending your views on the above points and in the light of the Council discussion on 30 November.

23 November 2006

Letter from Caroline Flint MP to the Chairman

Thank you for your letter of 23 November following your Committee’s consideration of the above document and accompanying Explanatory Memorandum dated 23 October 2006.

The Committee asked:

(i) What the government’s views are on Community competence in the areas covered by the IHR?
(ii) Whether the Government is aware of any Community involvement in the negotiations on the IHR 2005? If so, by whom was the Community represented and on what legal basis?
(iii) What competence does the government think the Commission has to draft, negotiate, and sign an administrative Memorandum of Understanding with WHO on the application of the IHR 2005? Does the Government know what the Commission envisages would be contained within it?

On the first point, we agree that the Commission’s Communication is not precise about the extent of Community competence in this area. However, setting out precisely what Community competence is or might be in all the areas on which the IHR (including recommendations that might be issued under them) could have an impact would be a major task. We note that, as explained in your letter, the Committee consider it clear that the Regulations do touch on policy areas pertinent to the Community. As and when any specific proposals...
are made, we shall certainly want to consider what they assume about Community competence and whether we agree with those assumptions.

On the second point, the Department of Health provided information to the Committee about progress with negotiating the new text of the IHR, because of the EU involvement in this process, on a number of occasions (including the Explanatory Memorandum on the Commission’s communication 13074/03 in 2003; the letters of 21 October 2004, 26 January 200529 and 7 April 200530 from John Hutton, and that of 3 June 200531 from Rosie Winterton). There has been some EU co-ordination on a flexible and pragmatic basis in the past, and there may be a place for similar activity in future.

On the third point, in the discussions that have taken place on the Communication since my Explanatory Memorandum was submitted, it has become clear that several Member States, like the UK, have concerns about some of the Commission’s proposals, and the Presidency have produced a note which highlights the need for further clarification from the Commission and discussion by Member States before we can agree to a Community role. Nevertheless, we should not ignore the possibility, as suggested in my Explanatory Memorandum, that there may be ways in which European bodies can enhance our ability to implement the IHR effectively. As the Committee themselves have noted, it is appropriate to co-operate where that would help speedy and effective application.

30 November 2006

Letter from the Chairman to Caroline Flint MP

Your letter of 30 November 2006 on the above Communication was considered by Sub-Committee G at its meeting of 11 January.

We note that there are concerns amongst the Member States about some of the Commission proposals and that clarification has been sought from the Commission.

We will therefore retain the Communication under scrutiny. Do please provide us with further information once the Commission has clarified the outstanding issues so that we can continue our scrutiny.

11 January 2007

LISBON OBJECTIVES: CONTRIBUTION OF THE CULTURAL AND CREATIVE SECTORS

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

I am writing to inform you of the Council Conclusions which officials are currently negotiating, and which we expect Ministers to adopt at the Culture and Audiovisual Council on 24 May 2007.

The Council Conclusions consider the economic contribution that the cultural and creative sectors can make to the achievement of the Lisbon agenda, and suggest the Commission and Member States maximise this potential by agreeing on a series of high level principles.

Context of the Council Conclusions

This strand of work has its origins in the Work Plan for Culture 2005–06, agreed by Council Decision in autumn 2004. This was a Council initiative designed to focus successive Presidencies and the Commission on a series of practical initiatives, which would have tangible benefits for the cultural sector. The work plan covered five initiatives, including the cultural industries’ contribution to Lisbon economic reform principles.

The Lisbon agenda strand of the Culture Work Plan: (i) invited the Commission to publish a study outlining how the cultural and creative industries already achieve the Lisbon targets by contributing to Europe’s economic, social and cultural potential; and (ii) invited Member States to recommend further action to enable the cultural industries to better meet the Lisbon targets in terms of European growth, employment and cohesion. The draft Council Conclusions relate to the latter objective.

POLICY IMPLICATIONS

If the Council Conclusions were agreed they would commit the Commission and Member States to:

1. Promoting evidence based policy making, for example, through the establishment of a strong quantitative base (statistics and indicators) for policy makers.

2. Strengthening the link between education and the cultural and creative sectors, by promoting creativity and business education.

3. Maximising the potential of SMEs in the cultural and creative sectors, by the facilitation of access to financing and integration the cultural dimension in cooperation and trade agreements between the EU and third countries.

4. Making better use of existing structures, programmes and initiatives, by strengthening the coordination of activities and policies impacting on the cultural and creative sector within the European Commission.

THE UK’S POSITION

The UK is content with the draft Council Conclusions, which have now been agreed by all Member States and the Commission at official level prior to next month’s Council. As I stated at the Culture Council last November, the UK Government believes that in order to achieve Lisbon goals, we should concentrate on those objectives which have the ability to increase the productivity of the sector the most.

During the negotiation of these Conclusions, the UK has been keen to ensure that this work is not done in isolation either from the cultural and creative industries themselves, or from other legislation, programmes and initiatives affecting these industries and which is being carried out elsewhere in the Commission.

FORTHCOMING WORK

The approach adopted by both Member States and the Commission in this area since the Culture Workplan 2005–06 will be incorporated into the broader Culture Communication, which is expected to be published by the Commission next month. The Culture Commission will be deposited in Parliament and will be subject to formal scrutiny by your Committee in due course.

26 April 2007

LISBON OBJECTIVES: EDUCATION AND TRAINING (6672/07)

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

Your Explanatory Memorandum on the above Communication was considered by Sub-Committee G (Social Policy and Consumer Affairs) at its meeting of 19 April 2007.

We share the Government’s view that, before adopting Council Conclusions, there is a need for more detail to be provided on what is envisaged by the eleven new core indicators. It is not clear to us, for example, what the core indicator “civic skills” is seeking to measure. We would therefore appreciate clearer definitions of the core indicators. We are not convinced either that there is a need for so many core indicators and we would welcome your views on this.

We believe too that the Government is right to express its concern about the proposal to devote at least 2% of GDP to a modernised higher education sector by 2015. This has important budgetary implications for Member State at the national level and as such may be considered to fall outside the remit of this policy initiative.

You allude in your EM to the need to minimise burdens on schools arising from new data collections, particularly in the areas of modern languages and learning-to-learn. We share your concerns and consider it extremely important to ensure a balance between the value of the data collected and the costs involved in both time and budgetary terms. In this context, we would be interested to receive from you some information on the development of the European Indicator of Language Competence, to which the Commission refers in Section 3.2 of its Communication.

Finally, we have a broader concern as to how appropriate it is for the European Union to be setting a framework of indicators and we would welcome your views on this question as well.
We will maintain the Communication under scrutiny pending further details from you, in advance of the Education Council on 25 May 2007, on the proposed indicators, on the European Indicator of Language Competence and on the appropriateness of this initiative.

24 April 2007

**MEDIA PLURALISM (5647/07)**

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

Your Explanatory Memorandum on the above Document was considered by Sub-Committee G at its meeting of 1 March 2007.

We note the content of the Document and share the Government’s concern about the possible future implications of the Commission’s activity in this area. Nevertheless, we do believe that the establishment of a set of concrete indicators could be a useful exercise.

One specific matter that we would like to be taken into account is the need to ensure that future work in this area does not inhibit the rights of individual Member States to restrict access to material that they judge to be undesirable.

We are content to release the Document from scrutiny and we would be grateful if the Government could inform us as and when there are further developments in this policy area.

1 March 2007

**MEDICAL DEVICE DIRECTIVES (5072/06)**

**Letter from Andy Burnham MP, Minister of State, Department of Health to the Chairman**

I am writing further to my letter of 13 June and your reply of 3 July 2006. As requested by you I attach a revised RIA (not printed) on the basis of the current state of negotiation in the Council of Ministers Working Group at this point in time.

As your committee will be aware, negotiations in Council have been ongoing for nearly a year during the Austrian and Finnish Presidencies. Therefore I thought it would be useful to update you on the current position.

The biggest issue of contention has been the overlap with the proposals, also currently under negotiation, for a European Regulation on Advanced Therapy Medicinal Products (on which I am writing to you separately). The particular issue is the extent to which the devices regime should be opened to products that, while acting in a physical way on the body, contain human tissues and cells. There is emerging agreement that where the tissues and cells are non-viable the devices regime should be opened up to accommodate such products. This would be a welcome development as it would introduce proportionate regulation for certain products that currently fall into a regulatory gap between the medicines and devices regime. However, there is disagreement over the regulatory position of products that would meet the definition of a device but for the fact that they also contain viable human or animal tissues and cells. An example would be an artificial joint with a coating of cells to help it be incorporated into the body. The Commission, the Presidency and a large body of Member States maintain that such a product should be regulated as an advanced therapy medicinal product. The UK is continuing to argue that the determining factors as to which regulatory regime applies should be the stated intended purpose of the product and the principal mode of action. We therefore argue that the possibility of using the devices regime, with suitable strengthening, should be opened up for viable as well as non-viable tissues and cells. We have a number of allies, and possibly sufficient support for a blocking minority, but this depends on the final position taken by other MS who have expressed some sympathy with our position.

At present the Presidency has removed all references to human tissue engineered products from the proposed text of the Medical Devices Directive on the basis of the Commission coming forward with a new proposal. It was made clear at the last Council Meeting by the Commission that any such proposal would only cover medical devices containing non-viable human cells and tissues which are ancillary to the device. We disagree with this approach and we are currently in discussion with other Member States who take the same view as ourselves on how to take this forward in Council. In any event it is unlikely that any further detailed discussion will take place before the incoming German Presidency.

The Finnish Presidency has concentrated a lot of its efforts on aiming to secure first reading agreement with the European Parliament (EP). This has been at the expense of detailed discussion of a number of Member States’ positions on the text itself which has caused some ill feeling in the Council. A particular issue raised by the European Parliament is that of reprocessing of not only single use devices should come within the provisions of the Medical Devices Directive. The UK’s view, supported by virtually all Member States is that the Medical Devices Directive regulates the first placing on the market and putting into service of medical devices and the manufacturer must demonstrate that all the essential requirements covering safety and quality are met. The Directives do not generally regulate the subsequent use to which these devices are put. Reprocessing of single use devices is normally carried out in a hospital setting. Our view is therefore that such activities are a matter for national law.

The Commission also agrees that the current revision of the Directives is not a suitable way to introduce any measures on reprocessing. They are, however, likely to make a formal commitment to consider all the issues involved with a view to bringing forward a separate proposal in due course. We will need to wait and see whether this Commission initiative will be sufficient for the European Parliament to remove their proposed additions to the text.

At the Health Council on 30 November the Finnish Presidency gave a short update on progress during its opening remarks and I will continue to keep you up to date with developments with the European Parliament and negotiations during the German Presidency.

19 December 2006

**Letter from the Chairman to Andy Burnham MP**

Thank you for your letter of 19 December 2006 and the accompanying revised Regulatory Impact Assessment (RIA). This was considered by Sub-Committee G on 18 January.

We take note of the arguments the UK Government is putting forward to the Commission with a view to improving the proposed amended Directive. We also note that these negotiations could continue for some further lengthy period of time.

Our view is that the issues still under discussion—in particular which of the Medical Devices Directive or the Advanced Therapy Medicinal Products Regulation should be applied to devices containing *viable* human tissues and cells—are technical in nature, and we are content to accept the arguments being advanced by the Government.

We are therefore content to clear this item from scrutiny.

19 January 2007

**MEDICINAL PRODUCTS FOR PAEDIATRIC USE (14654/06)**

**Letter from Andy Burnham MP, Minister of State, Department of Health to the Chairman**

I am writing to notify you that minor technical amendments have had to be made to the European Commission’s Regulation on medicinal products for paediatric use to bring it into line with Council Decision 2006/512/EC which lays down procedures for the exercise of implementing powers conferred on the European Commission. An Explanatory Memorandum is attached (not printed). The Government’s view is that the proposed changes are appropriate.

13 November 2005

**MODERNISING LABOUR LAW TO MEET THE CHALLENGES OF THE 21ST CENTURY**

**Letter from the Chairman to Jim Fitzpatrick MP, Minister for Employment Relations and Postal Services, Department of Trade and Industry**

You EM on the above topic dated 11 December 2006 was discussed by Sub-Committee G at its meeting of 18 January 2007.

We are pleased to note that the Government will be fully engaged in the debate launched by the Green Paper. We look forward to an up-date from you following the informal Employment and Social Affairs Council on 18 and 19 January and in advance of the adoption of Conclusions at the Council of 31 May.
In the light of the obvious importance of this dossier, the Committee is considering whether to launch an Inquiry into the topic and Sub-Committee G will be in contact with you about this in due course. Pending further information from you on the debate in Council and the views of stakeholders, we will hold the document under scrutiny.

19 January 2007

Letter from Jim Fitzpatrick MP to the Chairman

Thank you for your letter of 19 January following on from the EM on the above.

You requested an update on the Informal Employment and Social Affairs Council of 18 and 19 January, which was expected to address the Green Paper. Both the Secretary of State for Work and Pensions, John Hutton and I attended that meeting and a formal statement on the meeting was made to the House of Lords on 29 January by the Department for Work and Pensions Parliamentary Under Secretary, Lord McKenzie (a copy is attached).

In the event the German Presidency decided not to focus the Informal entirely on the issues raised in the Labour Law Green Paper. The broader theme was “Good Work”, which is one of the focal points of Germany’s current EU Council Presidency. A Presidency discussion paper defined good work as consisting of:

(a) fair wages;
(b) protection against health risks at work;
(c) worker’s rights to assert their interests and to participate;
(d) family-friendly working arrangements; and
(e) enough jobs.

The paper highlighted a number of references made to good work in the Green Paper and in other Commission documents such as the Communication on the Demographic Future of Europe.

To facilitate the debate, the Presidency proposed a series of questions for ministers to address:

1. Where and in what manner do you see for your country and for the EU as a whole a particular need to act to achieve the goal of good work:
   — with wages?
   — in asserting workers’ rights?
   — in protection against health risks at work?
   — in family-friendly working arrangements?

2. Should the Member States agree (much more binding goals on the road to good work?

3. A variety of other forms of employment has developed in addition to regular, unlimited employment relationships. Do ministers agree that the regular unlimited employment relationship will also in future provide a legal framework that promotes:
   — workers’ motivation;
   — further training; and
   — reliable communication and participation structures in the enterprise?

4. What concrete measures must be taken to provide legal and social security to people working in the new forms of employment or making transitions between different employment situations and periods without employment?

Taking their cue from the German Presidency paper, there was a wide-ranging exchange of views and national experiences. There was no negotiation, nor agreements reached. However the German Presidency prepared their own conclusions (attached), which essentially reflected points raised in debate.

For the UK, I pointed to the importance of flexible labour markets in stimulating job creation and higher employment. I went on to say that while we encourage choice in ways of working, only 6% of our work force was on a non-standard contract. I also make it clear that all workers had certain basic rights. John Hutton was one of the eight keynote speakers in the afternoon session. He said that the best way to manage insecurities was to provide employment security through equipping people to manage and take advantage of change and warned against protectionism and over-regulation. In both our interventions, we stressed that most of this work had to be done at the Member State level.
You also requested information on the views of stakeholders. My officials are holding meetings with interested parties during the ongoing consultation period. Areas of interest that have emerged in the discussions have included agency workers and the advantages of flexibility and choice to both employers and workers. A number of business representatives have expressed concern regarding the possibility of further employment legislation. Stakeholders have been encouraged to make their views known formally to the Commission and to engage with their European networks.

The Commission’s consultation on the Green Paper finishes at the end of March. The Commission will report soon after on the views that have been gathered. At present, there is no definitive indication that the Green Paper debate will result in any new legislative initiatives. It is expected that the debate will feed into ongoing work, such as that on “flexicurity”.

As you are aware, we in Government are considering the questions in the Green Paper and will respond in due course. I will ensure that a copy of formal response is copied to the Committee.

5 February 2007

Annex A

Extract from Official Report
(taken from the Parliamentary website)

29 January 2007, House of Lords, Col(s) WS4–WS6

EU: Employment and Social Policy Ministers’ Meeting

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord McKenzie of Luton): My right honourable friend the Secretary of State for Work and Pensions (John Hutton) and my honourable friend the Minister for Employment Relations and Postal Services (Jim Fitzpatrick) represented the UK.

The theme of the informal was “Good Work—more and better jobs”, which was discussed in two plenary sessions. My honourable friend Jim Fitzpatrick participated in the morning plenary stressing that the real outsiders were the unemployed. He went on to say that if Europe is to remain competitive in a global market and continue to afford valued social protection systems, flexible labour markets are needed both for workers and employers to stimulate job creation and encourage more people into work. One size does not fit all and member states have to develop approaches that work for their own labour market structures and traditions. But overly restrictive employment legislation risks a two-tier labour market and more jobs in the illegal sector. Effective, light-touch employment legislation is consistent with job creation and more permanent jobs. For example, in the UK, while we encourage choice in ways of working, only 6% of the workforce is on non-standard contracts; all workers have certain basic rights.

My right honourable friend Mr Hutton was one of eight keynote speakers in the afternoon session. He said that the best way to manage insecurities was to provide employment security through equipping people to manage and take advantage of change rather than through protectionism and over-regulation. This could be done by providing insurance in the broadest sense—through active labour market policies, skills and retraining, and the right labour law framework. Most of this work had to be done at member state level, but in the context of our shared European values. Even well functioning labour markets could have groups of vulnerable workers but it should not be assumed that this was due to their employment status alone.

All member states broadly agreed on the importance of high levels of health and safety at work. There was a strong emphasis on the social dimension of Europe, including, from some quarters, calls for an EU minimum wage, minimum standards for workers on “atypical contracts” and a European definition of a worker, although others continued to emphasise the primacy of meeting Lisbon targets and made it clear that social issues were for member states to decide. They also underlined the important role of social partners, of work-life balance, of lifelong learning, of a greater emphasis on skills and training, better childcare facilities, and promoting gender equality. Most member states agreed that it was up to them to lead on social issues, although the EU could provide added value by exchanging best practice and a general framework. The other recurring theme was that, with increased mobility of workers and free movement, member states had to co-operate more closely.

The German presidency concluded that we needed to look further at a number of issues, including the integration of ethnic groups and minorities into the labour market, grey areas such as bogus independent workers, and where the balance between rights and responsibilities was; also, that part-time work could be positive when it was what the workers wanted. But there were concerns that increased temporary work created
uncertainty for employees where this was at the expense of permanent regular contracts. Social policy was a national issue. The German presidency would continue to try to define what the social dimension of Lisbon should be.

Annex B

Chair’s Conclusions Drafted in Cooperation with the Two Following Presidencies Portugal and Slovenia

Europe needs more and joint efforts to promote GOOD WORK. GOOD WORK means employee rights and participation, fair wages, protection of safety and health at work as well as a family friendly work organisation. Good and fair working conditions as well as an appropriate social protection are indispensable for the acceptance of the European Union by its citizens.

The Ministers are of the opinion that greater flexibility on the labour market has to be reflected in adequate employee rights. This includes that employees can defend their participation rights with the help of collective bodies representing their interests. The Member States and the social partners bear great responsibility for preventing that more labour market flexibility will lead to a reduction of social protection for employees.

Fair wages are an important characteristic of GOOD WORK. The Member States and the social partners are called upon to ensure that wages are set in a fair and adequate manner while safeguarding the national wage setting systems’ characteristic features.

Working conditions that promote lifelong learning and the chance for further occupational education, modern and staff-oriented leadership and work organisation as well as promoting and maintaining health and occupational qualifications are the key to corporate competitiveness and to the employability of especially older employees. Corporate prevention and rehabilitation programmes must become standard practice.

Regular employment relationships are indispensable. They provide security and strengthen competitiveness in a sustainable manner. The Member States are called upon to strengthen standard working relationships in accordance with their national practice and to limit their circumvention by atypical employment relationships.

New forms of employment types can facilitate reintegration into the labour market. They must, however, not be abused of for the purpose of excluding employees from their rights. They must not lead to discrimination and exclusion.

Family friendly work organisation is an opportunity to improve equal rights, competitiveness, health protection, income security and coping with the demographic development. A family friendly work organisation must be developed consistently.

Young people need security in their occupational development and perspectives for their own future and the foundation of a family. They need clearly defined framework conditions for a good start in working life.

Wage replacement benefits and minimum security for job seekers are elements of a social Europe that has made the fight against poverty and social exclusion one of its central priorities. The persons concerned must receive help from a well balanced system of support programmes within the meaning of an activating labour market policy, in particular in view of threatening or actual unemployment. This approach combines support and demands.

Letter from the Chairman to Jim Fitzpatrick MP

Thank you for your letter of 5 February supplying the information I requested when I wrote to you on 19 January. This was considered by Sub-Committee G on 22 February.

We note the views that the UK Government put forward at the 18–19 January information Employment and Social Affairs Council meeting. In addition, we welcome the consultation the Government is carrying out with stakeholders, and note the issues which have already emerged from this.

As foreshadowed when I wrote to you on 19 January, EU Sub-Committee G has now decided to carry out an Inquiry into the issues raised by the Commission’s Green Paper; and we will therefore be retaining the document under scrutiny until that has been completed.

A Call for Evidence for the Inquiry was published on 8 February, with a closing date for written evidence of 30 March, and the Government’s input to this will be most helpful. We hope that you will be willing to visit a meeting of Sub-Committee G to give oral evidence for the Inquiry; and the Committee Clerk has arranged a time of 10 am to 11 am on Thursday 3 May for this with Louise Stevens.

23 February 2007
NOMINAL QUANTITIES FOR PRE-PACKED PRODUCTS (15570/04, 8680/06)

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

I wrote to you on 19 September 2006\textsuperscript{33} to highlight the possibility of a scrutiny override on this proposal during the recess. I am writing now to inform you of the outcome of the Competitiveness Council meeting on 25 September at which the proposal was on the agenda for political agreement.

In the event, political agreement was reached, based on a compromise proposal which was put forward by the Finnish Presidency a few days before, and modified on the day in the light of the discussion. This agreement is for full deregulation of all pack sizes, except those for wines and spirits, subject to a transitional period during which Member States with existing restrictions may maintain them for 3.5 years for milk, butter, coffee and pasta and 4.5 years for white sugar. (Taking account of the 18-month transposition period, this would mean that restrictions could be maintained on these products for five, or six, years respectively, after the coming into force of the new Directive).

As I mentioned in my earlier letter, events in Brussels have moved very quickly on this proposal and I regret that there has been no opportunity for the Committee to fully consider the proposal, or the evidence submitted to the Committee by UK stakeholders, before the proposal was put forward by the Finnish Presidency for political agreement.

We decided to support the compromise proposal because we thought that early agreement on this dossier was an important signal of the Council’s commitment to the better regulation agenda and its support for the Commission’s aims for the simplification of European law. In doing so, of course, we gave full weight to the deregulatory approach the Committee itself has favoured. While it would have been procedurally possible for the UK to abstain on the specific issue, it would have conveyed a most unfortunate wider impression, entirely at odds with our strong support for better regulation and legislative simplification at the European level.

We have throughout been keen to ensure that the interests of all UK stakeholders were taken into account and we thought that reasonable arguments had been put forward by some industry and consumer groups for the retention of fixed sizes for a few staple products. At the same time we had always taken the view that a large measure of deregulation was called for. In the negotiations in Council, it became clear that there was no support for fixed sizes for some of the products of particular concern to UK stakeholders, such as tea and bread. While the political agreement now reached will not therefore be satisfactory to all UK stakeholders, we consider that it does offer overall benefits both to business and to consumers.

The proposal agreed by the Council will not impose any new burdens on business. The removal of fixed sizes will not impose any direct costs on business—although we are aware that a few industry sectors have expressed concern that they may in time need to pack in a wider range of sizes to meet consumer or retailer demands. Against that, the removal of fixed sizes will, as the Committee have noted, give greater freedom to packers and greater choice to consumers.

The Committee have consistently stressed the importance of allowing consumers and producers time to adapt to the removal of restrictions. The transitional period agreed by the Council allows scope for those Member States who already have in place restrictions on pack sizes for those particular sectors to retain them for a limited time. The UK does have mandatory specified quantities for all five products and if the proposal is agreed in this form, we would of course consult with interested UK retailers, packers and consumers over the most appropriate transitional provisions within this framework. This would be within the context of our ongoing work to simplify and modernise weights and measures legislation.

Now that the Council has agreed its position, the European Parliament, which has so far favoured retaining permanent restrictions for a slightly wider list of products, will have the opportunity to re-consider the proposal in light of the Council’s position. We do not at this stage have any information on when the proposal may be given a second reading, though it would normally be expected that this would be within three months of the communication of the Council’s position. It is too early to say how the amended proposal may be received by the EP, though the proposal for transitional periods covering most of the products of concern to the EP should improve the prospects for early agreement.

I will of course keep you informed of any further progress on this proposal.

4 October 2006

\textsuperscript{33} Correspondence with Ministers, 40th Report of Session 2006–07, HL Paper 187, p 540.
Letter from the Chairman to Rt Hon Ian McCartney MP

Thank you for your letters of 19 September and 4 October which were considered by Sub-Committee G on 19 October.

We regret that it was necessary for you to over-ride scrutiny. It is particularly unfortunate that we did not have the chance to have the requested meeting with you before the discussion in Council, given that we have received and analysed several submissions from producer and consumer representatives which raised some interesting points on which your views would have been welcome. While we appreciate the difficulties posed by the Recess and the needs to take decisions in Council on this long-outstanding matter, we would still appreciate your views on a number of issues since the legislative process appears to be far from complete.

As you note in your letter, the Committee has consistently supported the deregulatory approach as a broad basis for the legislation. We are therefore pleased to note that the compromise reached at Council is essentially in line with that approach. On the other hand, as you acknowledge, our support for deregulation has always been predicated on the condition that a reasonable transitional period would be allowed to enable affected producers, retailers and consumers to adapt to the changes. We therefore seek your assurance that you are satisfied, following your consultations with the affected producers, retailers and consumers that the transitional periods adopted will indeed allow reasonable time for them to adjust to the new deregulated market.

We would also draw your attention to our consistent reminders about the need to consider the interests of vulnerable consumers, especially the visually-impaired. You will be aware that the RNIB has emphasised that the existence of guidelines in the UK for staple goods provides some consistency to such vulnerable consumers, at least so far as their most common everyday purchases are concerned. We have repeatedly urged the Government to consider whether the introduction of tactile identification symbols, perhaps based on Braille, might be a feasible way of meeting those needs and are disappointed that the Government does not appear to have pursued that suggestion. Similarly, the RNIB has advocated the alternative of introducing radio frequency identifiers, on which the Government has not commented. We believe that the adoption of this Directive might be an opporunity for the Government to take the initiative in promoting the examination of an imaginative EU-wide solution to this problem, in consultation with the RNIB and similar bodies, and are reluctant to see that opportunity pass without serious examination. Your considered comments would be welcome.

All the submissions that we have received have also raised with us concerns over the question of the UK’s derogation for small businesses from the Unit Pricing Directive. As we understand it, those concerns involve the possible conjunction of full deregulation without unit pricing in smaller shops. We are surprised that this has not been addressed in your correspondence and would be glad to know if the Government has given any thoughts to the dynamics between these two pieces of legislation and whether it might be sensible to lift the derogation for small businesses in these circumstances.

We look forward to your response on all the above questions and would be grateful if you would also keep us informed of the progress of any exchanges between the Council and the European Parliament about the Directive.

20 October 2006

PANDEMIC INFLUENZA PREPAREDNESS (15127/05)

Letter from the Chairman to Rt Hon Rosie Winterton MP, Minister of State for Health Services, Department of Health

Thank you for your letter dated 20 July 2006 which was received too late for consideration before the House rose for the Summer Recess. It was considered by Sub-Committee G on 12 October.

We are grateful to you for clarifying the respective roles of the Commission and ECDC and the way they are expected to work together in practice in dealing with avian and pandemic influenza. We also note what you say about co-ordination with Member States and the WHO and note that the Government is confident that links with the latter will be effective.

On the basis of the explanations and assurances you have given, we are prepared to release the document from scrutiny. But we look to the Government to continue to ensure that co-operation and co-ordination in this
vital area is well-planned and likely to work swiftly and effectively should the need arise. To that end, it would be helpful to know whether suitable arrangements are to be made to test the effectiveness of these plans in practice.

12 October 2006

Letter from Rt Hon Rosie Winterton MP to the Chairman

Thank you for your letter of 12 October 2006. I am pleased that you feel you are now able to release the Communication from scrutiny. I agree with you that it is extremely important that co-operation and co-ordination in this area is well planned and tested. My officials are continuing to work with colleagues across Europe and at the Commission, ECDC and WHO to ensure this is the case within Europe and wider afield.

Specifically regarding the effectiveness of EU plans, on 23–24 November 2006 Exercise “Common Ground” tested the interaction of national plans, as well as examining the role of the Commission. The exercise found that generally there was effective co-ordination and co-operation across the EU in relation to pandemic influenza preparedness and outlined some areas where further work would be beneficial. A report of the exercise can be found at http://ec.europa.eu/health/ph–threats/com/common.pdf

The Commission is currently considering organising further exercises, but at present has no definite plans. In the UK we are holding a follow-up to Exercise “Shared Goal”, (which tested our national responses at WHO phrase 4) early next year. Exercise “Winter Willow” will test our national response at WHO phrases 5 and 6 and will involve key international players, such as the EC, ECDC and WHO.

26 October 2006

PARTNERSHIP FOR THE CHANGE IN AN ENLARGED EUROPE—ENHANCING THE CONTRIBUTION OF SOCIAL DIALOGUE (12002/04)

Letter from Jim Fitzpatrick MP, Minister for Employment Relations and Postal Services, Department of Trade and Industry to the Chairman

Thank you for your letter of 23 June 2006, raising a number of different issues. I apologise for the delay in responding.

As you know one of the underlying principles of the European Social Dialogue is that it is autonomous, and Member States have no locus to intervene directly in discussions between social partners. The Communication from the Commission was therefore on a series of “recommendations” to the social partners about the way in which European Social Dialogue is given effect and proposed actions that the Commission itself decided to effect in relation to its own interaction with European Social Dialogue. The recommendations and proposed actions were a response to the enlargement of the European Union, and in particular the accession of 10 new countries in 2004. Two further states will accede next year. There may well be a case for the Commission and indeed the European Social Partners themselves to reflect further on the operation of European Social Dialogue in a larger Europe, although it is arguable that such a review might be more informative after a longer period of membership.

Your letter refers to meetings of social dialogue experts. Some time ago the Commission had suggested that Member States might discuss Social Dialogue in an expert group under the auspices of the regular High Level Group of Directors’ General of Industrial Relations. However, the prevailing view of most Member States was that given the autonomy of European Social Dialogue, it would be hard to see the role of such a group of representatives of Member States. However, the Commission will continue to report on social dialogue matters to the regular meeting of Directors’ General of Industrial Relations.

On the question of SME engagement in European Social Dialogue and the voice of SMEs in wider European policy making, the Government is a strong advocate of the SME Envoy and the need for this champion within the Commission for the purpose of making sure that relevant policy proposals have been thought through especially in terms of their impact on small business.

On the Commission legal study on Transnational Collective bargaining, the report was undertaken for the EU Commission. It provides an analytical framework to inform further work by the Commission on this topic, including its consultations with interested parties. For example, the report was discussed at a study seminar arranged by the Commission on 17 May attended by representatives of employer and trade union organisations at both EU and member state levels. The UK Government has not taken a position on the report’s analysis or its conclusions. The UK Government would note, however, that the creation of a new

mechanism to give legal effect to transnational collective agreements, which is one of the report’s recommendations, would not sit comfortably with the UK’s voluntarist approach to industrial relations where virtually all collective agreements are not legally enforceable.

16 October 2006

Letter from the Chairman to Jim Fitzpatrick MP

Thank you for your letter of 16 October, this was considered by Sub-Committee G on 30 November.

We note the explanation you provide of the limited role of Member States in engaging in discussions between the social partners, and of the need to bear in mind the possible impact of the forthcoming accession of two new Member States on the operation of social dialogue in the extended EU.

We welcome your clear support for the role of the SME Envoy in championing SME issues in European policy making; and we note the Government’s clear views on the undesirability of any future proposal from the Commission for legally enforceable transnational collective agreements.

We would be grateful if you could give us advance warning of any future move towards the introduction of European legislation in this area; or indeed of any significant new proposal from the Commission affecting UK policy. In such a case, we would await a new Explanatory Memorandum. In the meantime, we are content to release this Communication document from scrutiny.

6 December 2006

PROMOTING ACTIVE EUROPEAN CITIZENSHIP: NEW IMPETUS FOR EUROPEAN YOUTH

(11957/06, 12060/06)

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

You Explanatory Memorandum dated 31 August was considered by Sub-Committee G on 12 October.

You will see from our correspondence with your predecessor about the earlier documents related to this initiative that we have had reservations over the lack of clarity in some of the earlier proposals. We also questioned the practicality of implementing some aspects and had some concerns over the use of the Open Method of Coordination (OMC), which we commend to your attention.

While we have implicitly endorsed the overall policy in clearing the earlier documents from scrutiny, we are still concerned about the ambitious scale of this exercise and have doubts about the value of some aspects. We look to the Government to ensure that any activities generated by it are appropriate, soundly-based, proportional and likely to be of lasting practical value.

We note from your EM that the Commission have not attempted to analyse the effectiveness of the initiatives. We would urge the Government to press for rigorous analysis in the future. We also note the reported difficulties over the methodology in implementing some of the objectives, especially where Member States have difficulty in knowing where to start and how to identify indicators in evaluating progress. We recommend that the Commission should be pressed to suggest practical solutions to these problems.

On the other hand, we wonder whether the reported lack of resources at local level may simply be a fact of life which the Commission and Member States will have to recognise, given the pressure on local authority resources and the need to address other priorities. Better co-ordination may help, as the Commission has suggested, but the limitations should be understood.

We note that the Commission plans to reinforce the OMC mechanism. As a general rule, we expect the Government to ensure that the contribution of OMC is guided by clearly-defined agreed objectives that do not infringe on the competence of Member States or the principle of subsidiarity. In our view, OMC should concentrate on adding significant practical value, be carried out with as light a touch as possible and avoid being over-burdened by indicators or causing duplication or nugatory work. We would be glad to know the extent to which the OMC activities related to this exercise meet these criteria.

The apparent inconsistency with Article 149 of the Treaty reported in your EM of the proposals for greater participation by young people in party politics is also noted. We fully agree that Treaty competence must be respected and reflected in the text, but would welcome a fuller explanation of your reservations. In that context, we would also be glad to know whether the Government consider it is appropriate to recommend a debate on lowering the voting age to 16 for local elections.
We also agree that it would seem more sensible to subsume the evaluation report in the 2009 evaluation which has already been agreed.

Your EM says that Ministers may be asked to agree on a final proposal, presumably for the Resolution, at the EYC Council in November. We are prepared to release the Commission Communication (reference 11957/06) and accompanying Staff Working Paper (11957/06 ADD1) from scrutiny, but will continue to hold document 12060/06 (the draft Resolution) under scrutiny. We will expect you to give us a full progress report on the Working Group negotiations, covering all the above points, in good time before any Council decision is needed.

12 October 2006

Letter from Bill Rammell MP to the Chairman

I am replying to your letter of 12 October 2006 and I enclose the latest version of the Draft Resolution (not printed) on implementing common objectives for participation by and information for young people in view of promoting their active European citizenship. This is the version of the proposal which Ministers will be asked to agree at Youth Council on 13 November. I am not aware of any plans to discuss the Communication now that the Council Working Group has finished its deliberations.

In the Explanatory Memorandum which I signed on 31 August, I drew to your Committee’s attention two items of concern. I note that your Committee shared the UK Government’s concerns. I am pleased to be able to report that, through negotiation in Working Group, we have been able to remove the proposal that Member States should promote a greater participation by young people in party politics. This was an issue of concern for a number of Member States and it was therefore removed. Similarly, a number of Member States felt it was inappropriate for any EU proposal to be recommending a lowering of the voting age to 16. The text has therefore been amended to suggest that Member States should “where appropriate, consider debating the voting age and make full use of the experience gained in some Member States”. These words are consistent with UK government policy on the subject and I hope your Committee finds this change acceptable.

I am also able to report that the requirement to report on the implementation of these objectives has been subsumed into an additional section in the Member State report on the common objectives for a greater knowledge and understanding of youth, due at the end of 2008. The Commission has assured Member States that one or two paragraphs on the subject will suffice. The report that is due at the end of 2009 will be an evaluation of the process of cooperation in the youth policy area and the operation of the Open Method of Cooperation within it.

I note your more general concerns about the Open Method of Cooperation in the youth policy area and the issue of resources. I also note that your Committee has had these concerns for some time. It is true that in some policy areas the OMC has proved to be bureaucratic, time consuming and slow to produce results of real value. However, my officials report that in the youth policy area there is a real desire to respect Treaty competence, national differences and to keep it as light as possible.

OMC activity since the publication of the White Paper in 2001 has led to the agreement of common objectives in four priority areas; a handful of meetings of Member State nominated experts; and the creation of a European youth portal with links to national information services. The report by Member States of how they are implementing the common objectives in the first priority area, participation and information, has led directly to a reconsideration and redrafting of those objectives in the draft Resolution due for adoption in November. Future reports on the implementation of objectives in the remaining priority areas will lead to a similar evaluation of those priorities. Member States have stressed to the Commission that they would expect future Communications linked to Member State reports to be more analytical and less descriptive.

In view of the changes to the text of the Resolution, I hope your Committee can remove it from scrutiny so that it can be adopted at Youth Council on 13 November.

30 October 2006

Letter from the Chairman to Bill Rammell MP

Thank you for your letter of 30 October providing information about the modifications which have been made in the latest text of the draft Resolution “on implementing common objectives for participation by and information for young people in view of promoting their active European citizenship”. This was considered in correspondence by Sub-Committee G on 3 November.

While we wish to reiterate our concerns about the ambitious scale of the exercise proposed and the need to press for a rigorous analysis of the likely effectiveness of the actions proposed, we are prepared to release the latest version of the Resolution from scrutiny.
We understand that the draft Resolution is likely to be adopted at the 13 November Youth Council meeting. We would welcome hearing of the outcome of that meeting.

7 November 2006

PROTECTION OF CONSUMERS IN RESPECT OF DISTANCE CONTRACTS (13175/06)

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

Thank you for your Explanatory Memorandum submitted on 16 October. This was considered by the Sub-Committee on 30 November.

We note that the Commission is conducting a public consultation to collect views on aspects of the implementation of Directive 1997/7/EC as part of the reporting process laid down in Article 15(4). We note also that, in framing the UK response to this consultation, your Department is consulting with UK stakeholders.

We support this approach and are content to clear the document from scrutiny.

We understand that the consultation may lead to proposals from the Commission for changes to the existing Directive, and we would be grateful if you could keep us informed of any developments in that direction.

6 December 2006

PROTECTION OF MINORS (5593/06)

Letter from the Chairman to Shaun Woodward MP, Parliamentary Under Secretary of State, Department for Culture, Media and Sport

Thank you for your letter dated 28 August 2006 which was considered by Sub-Committee G on 19 October.

We are grateful to you for setting out in more detail the Government’s concerns about the Recommendation. We note your views on the inconsistency and impracticality of some aspects of the Recommendation which is regrettable. We share your concern about the intrusive nature of some aspects and over the direction of policy development at European level which appears to lie behind those aspects. As you note, Sub-Committee B will be able to explore those issues further with you as part of their examination of the TVWF/AVMS Directive.

On the other hand, we are glad to note the more positive aspects of the Recommendation, especially in attempting to make the Internet safer for children. We hope that the Commission can be encouraged to achieve those worthwhile objectives effectively in a way which accepts the reality of the rapid and diverse development of on-line services and does not impinge unduly on the freedom of the media or the principles of subsidiarity.

20 October 2006

PYROTECHNIC ARTICLES (13565/05)

Letter from Jim Fitzpatrick MP, Minister for Employment Relations and Postal Services, Department of Trade and Industry to the Chairman

I refer to your letter of 26 January 2006 addressed to Gerry Sutcliffe. I am replying as this matter now falls within my portfolio.

I should also like to apologise for the delay in replying, this is due to the fact that until the Finnish Presidency there had been no discussion on the text in the Council. The Presidency has now held six Council Working Groups; the European Parliament plenary is scheduled for 14–15 November with political agreement penciled in for the Competitiveness Council on 4–5 December. At present we do not have a new official text from the Council.

The Government maintains its line that whilst it was initially against this proposal it has become clear that there are benefits of trade harmonisation that will be gained, particularly by the manufacturers of automotive pyrotechnic articles (car-air bag detonators etc) and film/theatre/television pyrotechnics, where each Member State currently has very different legislation which needs to be complied with before market entry can be gained. Even in the area of fireworks, the proposal will open opportunities in other European markets that have not existed or where entry has been extremely hard before. However, our discussions with the firework
industry have indicated that the current situation on cross-border fireworks trade is unlikely to change very much if this proposal is adopted.

The draft changes proposed to the text by the European Parliament in respect of automotive pyrotechnic articles give these products much greater prominence in the text. It is felt that as automotive pyrotechnic articles are not generally available to members of the public the labelling requirements should reflect this and be aimed at the professional use and installation. We understand from manufacturers of such devices that they have found entry into other EU markets extremely difficult in the past. It is expected that this proposal will significantly improve the competitiveness of this sector of the European automotive industry.

Pyrotechnic articles used in film, theatre and television also have an improved definition and again as these are used only by people with specialist knowledge, the labelling requirements reflect this. Members of the CBI’s Explosives Industry Group with an interest in film, theatre and television pyrotechnics articles have also indicated a potential benefit from a harmonised European Market.

As for fireworks, which will make up the majority of products covered and sold under the scope of proposal, we are still of the opinion that little will change as far as improved EU market access is concerned. An amendment to the proposal suggested by the European Parliament does recognise that fireworks which are similar in design, function or behaviour but different in colour can be tested as product families. This should make a positive impact on the potential testing and compliance costs for fireworks. The text still recognises that the use of fireworks is subject to markedly different cultural customs and traditions in different Member States. This makes it necessary to allow Member States to take national measures to limit the use or sale of certain categories of fireworks to the general public on grounds of public security or safety. A proposed European Parliament amendment also adds noise or nuisance to this list. The text also allows Member States to maintain their existing bans taken on those grounds. In practice, this means that Member States are likely to maintain the status quo in their territories, maintaining existing bans and use requirements which will not free-up the market for new products.

The harmonisation of standards for all types of pyrotechnic articles is an essential requirement for the creation of a single market. However, in respect of fireworks, there is nothing new from Council Working Party discussions that indicates that this proposal will significantly improve consumer protection in Member States. As far as we have been able to ascertain the majority of injuries in Member States occur because the way fireworks are used or their inappropriate use rather than badly designed or manufactured fireworks. For example, it is traditional that fireworks are let off in the (often crowded) streets in the Netherlands on New Year’s Eve and the Queen’s Birthday. Spain also has a tradition of festivals and events where fireworks are let off in public places. Not surprisingly, the majority of injuries in these countries occur in the street or other public places. Nothing in this proposal will change these traditional uses and the injuries associated with them. Use of fireworks in the streets in the UK is of course forbidden, and, in our view, it is national measures similar to the UK’s against the misuse of fireworks that would improve consumer protection in respect of injuries. However such measures are beyond the scope of a European Directive on the marketing and use of products.

You sought clarification on what is meant by a one-off (particularly set-piece fireworks). A one-off firework might be a firework like a lattice that displays “Happy Birthday Agatha” etc. Although the makers of such lattice work would be professional and use the same components for each one, just spelling out different names etc, the text of the proposal requires each of these lattices to comply with the Directive. At present there is no easy route to compliance for these type of fireworks, however a European Parliament proposal suggests that if they are made for the manufacturer’s own use in the territory of the manufacturer they are not regarded as being placed on the market and not within the scope of the Directive.

The European Commission considers that Community action is justified in subsidiarity terms as the Pyrotechnics Directive ensures the free movement, within the Community, of pyrotechnic articles falling within its scope. The proposal aims to avoid discrepancies in national legislation caused by problems of interpretation, while allowing Member States to maintain national measures on specific categories of pyrotechnic articles—fireworks—on the grounds of public safety, security or public order. As such, the Commission’s claim that they have competence in this area appears justified. The Government considers that the principle of subsidiarity is adequately reflected in the approach of these proposals, and that the measures proposed are appropriate for Community level action.
Social Policy and Consumer Affairs (Sub-Committee G)

Letter from the Chairman to Jim Fitzpatrick MP

Thank you for your letter of 6 November 2006 which addressed the issues on this proposed Directive that we raised in my letter to Mr Gerry Sutcliffe MP of 26 January 2006. Sub-Committee G considered this at their meeting held on 8 March 2007.

We accept your assurances that there are benefits to be gained from the proposed Directive in terms of promoting the more effective operation of a single market in some of these products, particularly in the case of car air-bag detonators.

In the case of sale and use of fireworks, we understand the point that, while the proposed legislation will be useful to facilitate easier cross-border trade in professional displays, it will not have any significant impact on the protection of consumers from the misuse of fireworks. Such legislation, to protect consumers from their own misuse of fireworks, is for Member States to enact and is beyond the scope of the Commission’s competence.

We are reassured by your explanation that this is not, however, a concern for the Government since existing UK legislation, which already protects consumers from the misuse of fireworks to a greater extent than could be envisaged under the Directive, will not be affected.

We understand that this proposal is likely to come up for political agreement at a Competitiveness Council meeting in March or April, and we ask you to let us known the form in which the proposal is put to that Council meeting and the outcome of the meeting. On this basis, therefore, we are content to release this document from scrutiny.

8 March 2007

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

Thank you for your letter of 8 March 2007 advising me that the above Proposal was considered and cleared by Sub Committee G on that date.

As requested, I am writing to advise you that the Proposal was passed, unamended, by the Council on 16 April 2007. I enclose a copy of that text for information (not printed).

30 April 2007

REVIEW OF THE CONSUMER ACQUIS (6307/07)

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

Your Explanatory Memorandum on the above Green Paper was considered by Sub-Committee G (Social and Consumer Affairs) at its meeting of 22 March 2007.

You will be aware that Sub-Committee E (Law and Institutions) of the EU Select Committee undertook a closely related Inquiry (“European Contract Law—the way forward?”, 12th Report of Session 2004–05, HL Paper 95). That Report emphasised the urgency of improving the acquis but questioned the wisdom of pursuing the harmonisation approach. It was concluded that the “case for harmonisation of contract law across Europe has yet to be made. It is something that would have to be considered on its merits”.

We note that the “Consumer Law Compendium”, written as part of the Review process, concluded that there is no strong argument against a selective shift to full harmonisation in those areas where the use of minimum clauses has clearly caused barriers to trade without substantially increasing consumer protection.

It is our view that the evidence presented by the Commission in the Green Paper does suggest that the acquis must be improved as a matter of urgency. On the other hand, it also seems that a blanket approach to full harmonisation would not be in the interests of better regulation, nor indeed of consumers. We would therefore urge the government to be robust in acting on its stated policy objective of balancing the retention of its own strong levels of consumer protection against the benefits of a clear consumer framework across the Single Market.

The Commission itself cites respect of the principle of subsidiarity as an important consideration in this debate and we trust that the Government will proceed with full regard to that principle.
We have decided to retain the Green Paper under scrutiny and will consider the issue again in the light of your submission to the Commission on the Green Paper.

26 March 2007

RIGHTS OF THE CHILD: EU STRATEGY (12107/06)

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

The Sub Committee considered your EM on the above Communication at its meeting of 2 November 2006. We strongly support protection of the Rights of the Child and in this context we do consider that many of the proposed actions in the Strategy are laudable. It is certainly the case that the development of the Single Market has significant implications for children’s rights. We are of the opinion that, as Guardian of the Treaties, the Commission has a role to play in monitoring the impact of Community law on the Rights of the Child.

We do question, however, whether the monitoring work of the Commission necessitates a specific Strategy. In terms of the legal base issue, we share your concerns and we also feel that there are specific subsidiarity issues with the initiative as a whole. We trust that you will pursue these matters vigorously.

We have a specific query with respect to the UK’s general reservation to the UN Convention on the Rights of the Child as regards the entry, stay in, potential citizenship of and departure from the UK of those children subject to immigration control. We would appreciate your views on whether any such Strategy might have implications for this reservation?

Finally, from reading your EM, we are unclear as to whether or not discussions will take place amongst the Member States and with the Commission. We would be grateful if you could clarify the situation in this respect.

We look forward to your views on the above matters in addition to reports on any discussions within Council.

3 November 2006

Letter from Bill Rammell MP to the Chairman

Thank you for your letter of 3 November and your Committee’s comments on the Commission’s proposals in this area. I am grateful for your support for the Government’s position on the need for a specific Strategy and the issues of competence and subsidiarity. During the recent EU standing committee debate on this Communication I explained that we believe that any such strategy should stay within the Union’s existing competences and we should ensure that any EU activity in the field of children’s rights adds value to existing intergovernmental arrangements. We would oppose any future legislation on children’s rights that does not have a proper Treaty basis. We have made this position clear to the Commission and will continue to do so.

You asked about the specific issue of the UK’s general reservation to the UN Convention on the Rights of the Child as regards the entry, stay in, potential citizenship of and departure from the UK of those children subject to immigration control. Although there is no substantial threat from the Communication in its present form, there is a possibility that NGOs and others who are opposed to the reservation could use the call to “strengthen recognition and respect for UNCRC” to bring added pressure to bear on Member States. However, officials I have consulted at the Home Office believe that this would be relatively easy to handle with the Communication in its present form.

The Government would certainly seek to prevent any legislation which sought to “enforce” the UNCRC being brought forward, due to the competence issues I have already outlined. The Commission have assured us that they are not contemplating any legislative activity relating specifically to rights of the child in view of their lack of general competence in the area of fundamental rights. This was reiterated at a recent meeting between UKREP and the Commission.

The Government also shares your concerns about Member State consultation and discussion and, along with others, has expressed these concerns to the Commission, through the Permanent InterGovernmental Group L’Europe de l’Enfance, an ad hoc working group on Fundamental Rights and in a meeting with the lead Commission official.

The proposed Forum on the Rights of the Child will include Member State representation. Recent negotiations have led to a greater voice for representatives of Member State governments in the Forum and postponement of the initial meeting from March to June. However, the agenda is still set by the Commission, who also act as secretariat.
It is not entirely clear which Council formation(s) should consider this Communication. Following pressure from the UK and others, it was put on the agenda of a Social Questions working party in December but then removed. Other formations, including Youth and Justice and Home Affairs, have been considered and promoted by Member States. The German Presidency, which was supportive of the calls for more Member State consultation, has now said that it will await the outcome of the first Forum meeting in June before deciding on when and how the Communication will be discussed in Council. We will continue to press them on this point.

20 February 2007

Letter from the Chairman to Bill Rammell MP

Thank you for your letter of 20 February which addresses the issues on this Commission Communication that I raised with you in my letter of 3 November 2006. This was considered by Sub-Committee G at its meeting on 22 March.

We continue to be concerned that the proposed strategy on the rights of the child should not in any way go beyond the scope of Community competence. We are reassured that you share this view and will continue to make this position clear to the Commission.

We note your comment that the Government will seek to prevent any legislation which could undermine the UK’s general reservation relating to the UN Convention on the Rights of the Child (UNCRC). However, we remind you of the conclusion set out in paragraph 49 of the 17th Report of the Joint Committee on Human Rights (HL 99/HC 264), published in March 2005, which stated:

“We are disappointed that the Government has failed to act on our earlier recommendation that it should withdraw the immigration and nationality reservation to the CRC. In our view, the maintenance of this reservation, which withdraws the protection of the Convention from a particularly vulnerable group of children, undermines the otherwise strong record of the Government in the advancement of children’s rights, and calls into question the UK’s commitment to a Convention central to international human rights protection. We reiterate our previous recommendation that the Government should withdraw this reservation”.

We share the Joint Committee’s view that this general reservation is damaging to the UK’s reputation in relation to children’s rights which, in many other respects, is creditable; and we urge you to reconsider the Government’s position on this.

On this issue of the Commission’s discussion of these issues with Member States, we feel there is further to go, and we urge you to take all opportunities to make the Government’s views known to the Commission and to establish where other Member States stand on the issues.

At this point we are prepared to release the document from scrutiny, but we ask you to keep us informed of developments in the Commission’s thinking on the strategy and to alert us in advance of any firm proposals being put forward.

26 March 2007

ROADMAP FOR EQUALITY BETWEEN WOMEN AND MEN 2006–2010 (7034/06)

Letter from the Chairman to Meg Munn MP, Parliamentary Under-Secretary for Women and Equality, Department for Communities and Local Government

Thank you for your letter dated 9 August 2006 which was considered by Sub-Committee G on 19 October. We are grateful to you for explaining why the Roadmap approach has been adopted in this case. We are content with that explanation, although we are still not entirely clear what is meant by the expression “roadmap” in this context and would have preferred to have had these proposals presented in more readily-understandable language.

More specifically, we regret that you have not responded to our question whether the highly ambitious plans contained in the Roadmap, however commendable, are realistic and achievable in the timescale set. It appears from your letter that the Government are satisfied with the arrangements proposed by the Commission for monitoring, evaluating and reporting on progress on the implementation of those plans and are seemingly

content to wait and see what those reports produce. We assume that those reports will be submitted for Parliamentary scrutiny in due course and will expect the Government, in doing so, to consider whether the proposals were realistic and achievable in the first place.

Nor have you commented on how all this activity is to be managed. I pointed out in my letter dated 5 May that this was not clear either from the Commission documentation or your own EM. We will continue to look to the Government to ensure that this activity does not lead to excessive bureaucracy, duplication of effort or unforeseen extra expenditure and that it will not infringe on the competence of Member States or the principle of subsidiarity.

Although it does not specifically say so, your letter gives the impression that the Roadmap itself has now been accepted by Member States as a basis for operation and will not be discussed further. If that is so, we are prepared to release the document from scrutiny. But we welcome your assurance that any specific proposals based on the Roadmap will be submitted for Parliamentary scrutiny under an EM from the Department. We will expect any such EM to take due account of the general observations in my letter dated 5 May when assessing these proposals.

We are also grateful to you for promising that relevant colleagues and departments will be consulted as necessary, when each specific proposal is produced by the Commission. Because of the ambitious and often ill-defined nature of these proposals we will expect that consultation to be full and adequate and look to you to ensure that those consulted will be given reasonable time to respond.

Thank you for acknowledging our concerns about the European Gender Institute and the Fundamental Rights Agency and for promising to report further developments on the former. We are preparing a supplement to our Inquiry Report based on the oral evidence which you gave to Sub-Committee G on 13 July and the correspondence surrounding it. We will send you a copy as soon as it is issued.

20 October 2006

Letter from Meg Munn MP to the Chairman


In regards to whether the plan is achievable within the timescale set, I would like to reiterate that relevant departments were consulted on the plan, and based on satisfied agreement that we can achieve the objectives, we signed up to the Roadmap. I agree that it is ambitious but also realistic and will help all Member States to take another step towards achieving equality between women and men.

I have also noted your concern on ensuring that the activities in the Roadmap to not lead to excessive bureaucracy, duplication of effort or unforeseen extra expenditure. I attended the informal Ministerial meeting in Helsinki in October and I made the point that any initiative arising as a result of the Roadmap (in this instance the proposed establishment of an EU network of women in economic and political decision-making positions) although worthy, would have to be proportionate and cost effective for Member States. Officials will continue to work with the Commission to ensure that all these concerns are thoroughly addressed as they arise.

I can confirm that the Roadmap has been accepted by Member States as a basis of operation. I would, therefore, welcome the release of the document from scrutiny.

I will continue to keep you informed of any future reports on the Roadmap. I have also recently copied you in on the current UK proposed negotiating lines on the European Gender Institute.

21 November 2006

Letter from the Chairman to Meg Munn MP

Thank you for your letter of 21 November. This was considered by Sub-Committee G on 7 December.

We welcome your efforts to emphasise to your Ministerial colleagues in Europe how important it is that any initiative arising as a result of the Roadmap, however worthy, must be proportionate and cost-effective.

We note that the Roadmap for Equality between men and women has now been accepted by Member States as a basis of operation, and we are therefore content to clear this document from scrutiny.

8 December 2006
SOCIAL SECURITY SYSTEMS (5896/06, 9584/06)

Letter from the Chairman to James Plaskitt MP, Parliamentary Under-Secretary of State, Department for Work and Pensions

Thank you for your letter dated 12 September 2006 which was considered by Sub-Committee G on 19 October.

We are grateful to you for this helpful progress report. We note your particular concern over the child-raising provisions and that several other elements still need to be resolved in negotiations and look forward to a further report on any progress made in negotiation on those issues.

We would also be glad to know whether the Government considers that the arrangements proposed for self-employed persons are soundly-based and likely to work fairly and effectively in practice.

We understand that this Proposal is on the Agenda for political agreement at the ESPHCA Council on 30 November/1 December. We will retain the document under scrutiny and would be grateful if you could ensure that we are given a full report on all the points indicated above in good time before Council decisions are needed.

20 October 2006

Letter from James Plaskitt MP to the Chairman

My Explanatory Memorandum of 16 February 2006 and 30 March 2006 and my letter of September 2006 refer. I am now writing to provide a progress report on the negotiations to amend the Regulation that implements the European Social Security Coordination Regulations. I am sorry not to have written sooner.

OUTCOME OF DECEMBER EMPLOYMENT, SOCIAL POLICY, HEALTH AND CONSUMER AFFAIRS COUNCIL (EPSCO)

The proposal to agree an implementing Regulation for the simplified coordination provisions is complex and will take some time to work through in the Council. Consequently the Member States have decided that the Council will reach a general approach on a chapter-by-chapter basis. This matches the successful approach already taken with the main coordinating Regulation. The June Council had agreed a general approach on Titles I and II. The December Council agreed a general approach on the articles relating to invalidity benefits, old age pensions and survivor’s benefits.

This is a provisional agreement, and the final text may be changed as a result of issues that arise in future discussions.

Amongst the issues discussed were how to deal with period of voluntary insurance, which Member State a person should claim their benefit from, a requirement for Member States to provide information to benefit claimants about the impact of deferring a claim for benefit, and how claims will be investigated and awards speeded up.

As I explained in my previous update in September, an important issue for the UK was a draft article relating to periods of child-raising (Article 44). It was based upon two judgments from the European Court of Justice (Elsen C-135/99 and Kauer C-28/00) which clarified the rights of ex-workers who receive child-raising protection for their pension from the Member State they worked in, but then move to live in another Member State where they cannot obtain such protection on the basis of residence. The Commission proposal did not actually cover ex-workers but sought instead to extend rights to people who have never worked, leaving workers to be covered by the case-law rather than a provision in the regulations. The UK felt that any article on this issue should incorporate the case-law itself into the coordinating provisions and not extend rights beyond those given by the Court. After much negotiation Member States agreed to an Article that reflected the case-law.

QUESTION RAISED ON THE SELF-EMPLOYED

I would also like to refer to your letter of 20 October in which you asked a general question about the simplification of the coordinating rules—whether the Government felt that the arrangements proposed for self-employed persons are soundly-based and likely to work fairly and effectively in practice.

The current EC Regulation 1408/71 affords self-employed migrant workers the same social security obligations and rights under the legislation of any Member State as the nationals of that state. In general terms, the provisions for self-employed people are identical to that of employed persons and are effective in practice. In this regard, all these provisions have been carried through to EC Regulation 883/04.

DISCUSSIONS UNDER THE GERMAN PRESIDENCY

Under the German Presidency, the Council Working Group is discussing the provisions relating to sickness and maternity benefits, including equivalent benefits for paternity, benefits in respect of work accidents and occupational diseases, and death benefit.

Sickness benefits include health care which is a sickness benefit “in kind”. A concern has arisen for the UK relating to the read across between these coordinating Regulations and an expected proposal for EC legislation on health services.

The Regulations set out the rules under which the home Member State will pay for a patient to go abroad for treatment (“the E112” route). Recent ECJ judgments have created a different set of rules for treatment abroad, this is the “Article 49” route (named after the relevant section of the Treaty). The expected proposal for health services legislation will incorporate this new case law, which would then leave us with two conflicting pieces of EC legislation covering the same thing. This would be confusing for patients and difficult to administer.

The aim of the UK is to achieve consistency and coherence on the issue of patient mobility within the EU and the Government is currently considering how this problem can be resolved.

25 April 2007

STATISTICS ON PUBLIC HEALTH AND HEALTH AND SAFETY AT WORK (6622/07)

Letter from the Chairman to John Healey MP, Financial Secretary, HM Treasury

You Explanatory Memorandum on the above Proposal was considered by Sub-Committee G (Social and Consumer Affairs) at its meeting of 29 March 2007.

We believe that the lack of an Impact Assessment is unacceptable given the potentially high costs arising from the draft Regulation. We would like to consider this aspect further in the light of the Commission’s “analysis of the consequences”, which we would be grateful to receive from you as soon as possible.

We do also adhere to your view that any new additional administrative burdens resulting from the proposed Regulation could go against the principles of Better Regulation. In that context, we would appreciate your views on whether the application of the new “Regulatory with scrutiny” comitology procedure may offer any comfort in terms of reducing the power of the Commission and avoiding the threat of unduly burdensome regulation.

Finally, we note that the UK and some other Member States are taking legal advice on the relevant competency of the Commission in this case. We would be interested to learn of the outcome of this advice.

We will hold the Proposal under scrutiny pending your views on the impact in this case of the new comitology procedure, the outcome of your legal advice and receipt of the Commission’s “analysis of the consequences”.

29 March 2007

Letter from John Healey MP to the Chairman

Thank you for your helpful letter of 29 March.

The “analysis of consequences” referred to has now been received from the Commission and is attached for your information (not printed). I will respond on the other issues you raise as soon as possible.

18 April 2007
Social Policy and Consumer Affairs (Sub-committee G)

Working Time Directive (12683/04, 9554/05)

Letter from Jim Fitzpatrick MP, Minister for Employment Relations and Postal Services, Department of Trade and Industry to the Chairman

I am writing to update your Committee on the progress made under the Finnish Presidency during the summer recess and to update you, as requested, on how the failure to solve the problems caused by the SiMAP and Jaeger rulings is affecting the day-to-day running of hospitals and the training of junior doctors and whether it is exposing hospital authorities to a serious risk of litigation or intervention by the Commission.

Finland has been engaged with this dossier from the start of their Presidency and appears keen to resolve the dossier. However it is too soon to tell whether Finland’s eventual proposal will meet the UK’s needs as we are awaiting information on the detail of what they have in mind.

Ministers and DTI officials have spent the last few months meeting other Member States—both those in favour of and opposed to the UK’s position—in an effort to find a solution and push forward the debate.

The Finns have called an extra Employment Council on 7 November at which they say they intend to focus primarily on the Working Time Directive. In the meantime the UK Government will continue to fight to achieve a solution to the problems caused by the ECJ SiMAP and Jaeger judgments and the retention of the individual right to opt-out of the 48-hour maximum working week, without unnecessary restrictions.

Effect of SiMAP/Jaeger

The NHS has implemented the SiMAP/Jaeger interpretations of the Working Time Directive and sustained patient services. This has been particularly challenging in highly specialised 24/7 services such as maternity, paediatrics and anaesthetics.

SiMAP/Jaeger continues to distort working patterns in some specialties and is a challenge to continuity of patient care and medical training. Surgical trainee logbooks show a 21% reduction in cases performed. This is the result of working night shifts when few training opportunities are available. In addition, training opportunities are share amongst larger teams of doctors needed to staff shifts (compared to traditional resident on-call working).

The Department of Health is supporting the medical profession in providing practical help to doctors who work shifts and has commissioned Sheffield University to undertake WTD research to help support training. Also, the better managed and structured training arrangements set out in Modernising Medical Careers (MMC) should lead to more meaningful and focused training. This can help ease the pressures on trainees’ time as the new training programmes will focus on developing the skills required and ensuring that the most is made of all the educational opportunities available. This should be a benefit in developing WTD compliant rotas. MMC specialist training commences in August 2007.

DH has appointed National Workforce Projects as the lead NHS organisation to support full implementation of the new requirements in the existing WTD for doctors in training from August 2009. In order to do so they have commissioned a range of pilots including team working and handover pilots to support continuity of care; and making care 24/7 pilots, which builds on the principles of the Hospital @ Nights (H@N) project. H@N multi-disciplinary teams reduce the number of doctors needed in the hospital at night through cross-over between specialties.

Risk of Litigation/Intervention by the Commission

We understand that the Commission has undertaken an analysis and concluded that 23 countries, including the UK, are having problems implementing SiMAP/Jaeger. It has threatened to commence infraction proceedings against those member states involved, as it has several times in the past, but as yet has not shown any signs of action.

The Position in Other Member States

As highlighted above, according to the Commission there are only two Member States that have no difficulty in implementing the SiMAP/Jaeger judgments although the exact position varies from state to state. Some Member States have implemented the judgments at huge cost, some have not implemented the judgments at all and some use the flexibilities allowed in the Directive, such as the opt-out and collective agreements, to mitigate the effects of the judgments on their health services.
I hope your Committee will find this information helpful.

11 October 2006

Letter from Jim Fitzpatrick MP to the Chairman

I am writing to outline the Government’s position on the renegotiation of the Working Time Directive in advance of the next Employment Council on 7 November. I understand that the Finnish Presidency is committed to resolving this dossier and Working Time is on the agenda of the Council for political agreement. I believe that you have already received the annotated agenda from colleagues at the Department for Work and Pensions.

We have received an initial proposal from the Finnish Presidency, however it has become clear during discussions at Member State level that different Member States have interpreted the provisions of the proposal differently and that further clarification is needed. We believe that the Presidency will be issuing a final proposal shortly before the Employment Council.

While we are doing everything we can to support the Presidency’s efforts to find political agreement, and resolve the Directive in line with UK objectives, we do not yet know exactly what the detail of the final Finnish proposal will be.

I am sure you understand that this is a very tight timetable and it will be difficult for me to send you the Government’s response to the final Presidency proposal in time for you to discuss the scrutiny position before the Employment Council on 7 November.

I am therefore writing to reassure the Committee that the UK’s policy and negotiating priorities have not changed since I last wrote to you in October 2006. They remain:

— a solution to the problems caused by the ECJ Simap and Jaeger judgments; and
— the retention of the individual right to opt out of the 48 hours maximum working week, without unnecessary restrictions.

I know that many Member States agree with these views and that the Finnish Presidency has been working hard to find a way forward that is acceptable to Member States in order to resolve this dossier.

Initial indications are that Finland’s proposal is likely to include additional provisions to ensure proper protection of workers including safeguards for those using the opt-out. We would be willing to consider and might be willing to accept such provisions so long as the Government’s priorities, as recorded above, are respected.

If possible, I will endeavour to send you the final formal proposal we receive from the Finnish Presidency, with the Government’s view, in time for you to discuss the scrutiny position before the Employment Council on 7 November.

I am therefore writing to reassure the Committee that the UK’s policy and negotiating priorities have not changed since I last wrote to you in October 2006. They remain:

— a solution to the problems caused by the ECJ Simap and Jaeger judgments; and
— the retention of the individual right to opt out of the 48 hours maximum working week, without unnecessary restrictions.

I know that many Member States agree with these views and that the Finnish Presidency has been working hard to find a way forward that is acceptable to Member States in order to resolve this dossier.

Initial indications are that Finland’s proposal is likely to include additional provisions to ensure proper protection of workers including safeguards for those using the opt-out. We would be willing to consider and might be willing to accept such provisions so long as the Government’s priorities, as recorded above, are respected.

If possible, I will endeavour to send you the final formal proposal we receive from the Finnish Presidency, with the Government’s view, in time for you to discuss the scrutiny position before the Employment Council on 7 November.

I do hope you and the Committee find this information helpful.

30 October 2006

Letter from the Chairman to Jim Fitzpatrick MP

Thank you for your letter dated 11 October which was considered by Sub-Committee G on 26 October.

We are grateful to you for reporting recent developments in your continuing attempts to find a satisfactory solution to the impasse created by the proposed Directive and the Simap and Jaeger ECJ rulings.

We note that the Finnish Presidency have called an extra Employment Council for 7 November in an effort to resolve the impasse, although their precise proposals are still awaited. Ideally, we would hope that any Presidency Proposals will emerge in time for them to be considered by the Committee before the Council meeting.

But, in case that is not possible, we confirm that you may continue to have the contingency discretion set out in previous correspondence for you to support, if necessary, any last-minute deal which may emerge that meets the essential national objectives, as defined in previous correspondence, for the retention of the voluntary individual opt-out in a manner that is appropriate to British circumstances and an effective and workable solution to the problems created by the Simap and Jaeger ECJ rulings over the on-call duties of residential hospital personnel and other employees in similar circumstances. As I pointed out in my letter to you dated
20 July 2006\textsuperscript{40} that solution should satisfy not only the needs of hospital staffing and patient care, but also those of medical training.

We are very disturbed by your report on the adverse consequences which those rulings are causing for NHS working patterns, patient service and medical training. We are glad to learn that the Department of Health have been trying to find ways of mitigating those consequences and helping the NHS to adapt to the new requirements. But this is clearly a highly unsatisfactory situation for which a workable solution is long overdue and must be found as soon as possible.

We are glad to learn that the Commission has so far shown no sign of taking action to bring infraction proceedings based on these judgements, although it has apparently been threatened to do so. We believe that it would be politically unacceptable for the Commission to have the audacity to do so when those judgements are clearly causing severe difficulties for a number of Member States and have been actively and consistently opposed by the UK and many other Member States and while the Commission have failed to find an acceptable solution. We would urge that any attempt by the Commission to bring infraction proceedings should be staunchly resisted at the highest possible level by the UK.

In the circumstances, we would be glad to know whether you consider it might be possible to find a way of breaking the linkage, either legally or politically, between the opt-out and the on-call duty elements which might pave the way to resolving the on-call duty problem while discussion of the opt-out element continues.

We will continue to retain this document under scrutiny pending your further report.

31 October 2006

Letter from the Chairman to Jim Fitzpatrick MP

Thank you for your letter of 30 October which appears to have crossed with mine to you of 31 October. Your letter was considered by Sub-Committee G on 2 November.

We note the continuing uncertainty about the proposal relating to Working Time to be put forward by the Finnish Presidency at the 7 November Employment Council meeting.

In your letter you ask us to understand the potential need for you to override scrutiny in order, if the opportunity arises at the Council meeting, to agree to a deal acceptable to the UK.

In fact, I believe that my previous letter covered this eventuality in terms of our agreement to an arrangement for contingency discretion which would allow you to support an acceptable proposal without the need for scrutiny override.

I attach a copy of my previous letter for your attention and trust this provides you with a satisfactory solution in the circumstances.

3 November 2006

Letter from Jim Fitzpatrick MP to the Chairman

I am writing to update your Committee on events at the Employment Council on 7 November. I was grateful for the Committee’s agreement to a contingency discretion to support a proposal that met the negotiating priorities of the UK Government.

As you may already be aware, Member States were unable to reach agreement at the Employment Council because a blocking minority of five Member States insisted that the Directive include a date for the end of the opt-out, something which is unacceptable to the UK and to many other Member States. The UK made clear that it stood ready to be constructive and stressed the need for a solution to the problems posed by the SiMAP and Jaeger judgements but was also firm on the need to retain the individual opt-out.

We were obviously disappointed that the Council ended without reaching agreement and it is not clear at the time of writing what, if any further plans the Finnish Presidency have for the dossier. The next Employment Council under the Finnish Presidency is being held in December. Although the Presidency have said that they will not deal with the Directive at the Council, it is still possible that Working Time will be discussed. In any event, our policy and negotiating priorities will remain unchanged and the UK Government will continue to fight hard in order to achieve:

\begin{itemize}
  \item a solution to the problems caused by the ECJ SiMAP and Jaeger judgments; and
  \item the retention of the individual opt-out of the 48-hour maximum working week, without unnecessary restrictions.
\end{itemize}

\textsuperscript{40} Correspondence with Ministers, 40th Report of Session 2006–07, HL Paper 187, p 558.
You asked whether it would be possible to break the linkage between the opt-out and on-call duty elements of the Directive. This would certainly be possible and one or two Member States suggested this as an approach in the recent Council. However, to date, this suggestion has been opposed by a minority of Member States as they are unwilling to agree any way forward that does not set a date for the end of the opt out, despite the problems these judgements are causing throughout the EU.

We are now waiting for the Presidency and Commission to decide on what the next steps for this dossier will be. We will of course keep you and the Committee informed and write to you again when we have more concrete information to report.

17 November 2006

WORKING TOGETHER, WORKING BETTER: EU SOCIAL PROTECTION AND INCLUSION POLICIES (5070/06)

Letter from the Chairman to James Plaskitt MP, Parliamentary Under-Secretary of State, Department for Work and Pensions

Thank you for your letter dated 19 July 2006 which did not reach us in time for consideration before the House rose for the Summer Recess. It was considered by Sub-Committee G on 12 October.

We are grateful to you for your full explanation of the progress which has been made since your Explanatory Memorandum was originally submitted in January and for sending us copies of the relevant documents mentioned in your letter.

We are also grateful for your assurance that, in the Government’s view, the Commission’s Proposals meet our criteria for OMC and that the early signs from this exercise are reasonably encouraging. We are glad to learn that the March Employment and Social Policy Council reiterated the need for OMC to respect the competence and responsibility of Member States in this area.

Thank you, too, for confirming that Member States are able to set targets at national or sub-national level, but that no EU level targets have been proposed, and that the European Parliament still has no formal role in OMC.

All in all, this seems a satisfactory outcome and we are prepared to release the document from scrutiny, although we will continue to expect the Government to monitor the process closely and to bear our OMC criteria in mind.

12 October 2006