Correspondence with Ministers
November 2007 to April 2008
The European Union Committee
The European Union Committee of the House of Lords considers EU documents and other matters relating to the EU in advance of decisions being taken on them in Brussels. It does this in order to influence the Government’s position in negotiations, and to hold them to account for their actions at EU level.

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

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

The Committee has seven Sub-Committees which are at present:
Economic and Financial Affairs, and International Trade (Sub-Committee A)
Internal Market (Sub-Committee B)
Foreign Affairs, Defence and Development Policy (Sub-Committee C)
Environment and Agriculture (Sub-Committee D)
Law and Institutions (Sub-Committee E)
Home Affairs (Sub-Committee F)
Social Policy and Consumer Affairs (Sub-Committee G)

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Lord Dear       Lord Powell of Bayswater
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In addition, the following were Members during Session 2008-08:
Lord Blackwell       Lord Mance
Lord Grenfell       Lord Tomlinson
Lord Harrison       Lord Wright of Richmond

Information about the Committee
The reports and evidence of the Committee are published by and available from The Stationery Office. For information freely available on the web, our homepage is http://www.parliament.uk/hleu
There you will find many of our publications, along with press notices, details of membership and forthcoming meetings, and other information about the ongoing work of the Committee and its Sub-Committees, each of which has its own homepage.

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Contacts for the European Union Committee
Contact details for individual Sub-Committees are given on the website. General correspondence should be addressed to the Clerk of the European Union Committee, Committee Office, House of Lords, London, SW1A 0PW. The telephone number for general enquiries is 020 7219 5791. The Committee’s email address is euclords@parliament.uk
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1. 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.

2. We publish volumes of such correspondence, including Ministerial replies and other material where appropriate¹. This volume covers the period from November 2007 to April 2008 and includes the text of letters sent² 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.

¹ The previous volume of Correspondence with Ministers was published as the 11th Report, Session 2008-2009 (HL Paper 92).
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

AREA OF FREEDOM, SECURITY AND JUSTICE: UK OPT-INS

Letter from the Chairman to the Rt Hon Baroness Ashton of Upholland, Lord President of the Council and Leader of the House of Lords

You will remember that the European Union Committee, in its report *The Treaty of Lisbon: an impact assessment*, considered the position on Parliamentary scrutiny of Government decisions on whether or not to opt in to particular measures under Title V of the TFEU. We concluded (paragraph 6.275 of our report) that this was a matter to which we should give further consideration. We have now set up a small group to look into this.

Currently there is no separate scrutiny of decisions on whether or not to opt in to measures under TEC Title IV; decisions are mentioned in the explanatory memoranda and are dealt with simply as part of the scrutiny of the proposal. We will be considering whether this scrutiny will be adequate when the range of measures to which the opt-in applies is greatly increased, and also looking also at the special position in relation to amending measures.

The group will be meeting for the first time on Tuesday 29 April, and it would be very helpful if I could have before then a note setting out the Government’s current thinking on what Parliamentary control there should be of such Government decisions, and how you feel it would work in practice, particularly given the time constraints on the notification of decisions to the Council.

23 April 2008

IMPACT OF LISBON TREATY ON EU INSTITUTIONS

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

As you know, the Select Committee is inquiring into the impact of the Lisbon Treaty on the UK and the EU. In our section on foreign policy, we examine the question of the changes to EU Treaty provisions on consular protection.

We would be most grateful for supplementary written evidence on the following question, which we hope is not a difficult one. Does the Lisbon Treaty change anything with regards to the responsibility of the UK Diplomatic and Consular Services for providing assistance and protection to Commonwealth and Dependent Territory Citizens? We would appreciate a response by Monday 18 February.

8 February 2008

Letter from Jim Murphy MP to the Chairman

Your Committee has asked that Parliament be kept updated on discussions with EU partners on issues related to implementation of the Lisbon Treaty.

There are a number of implementation issues to be decided before the Treaty enters into force. Preparatory technical discussions in some areas have already begun under the Slovene Presidency. Whilst it is only sensible to ensure that the EU is ready to implement the Treaty—if all countries have ratified—we have made it clear to and agreed with our EU partners that no final decisions can be taken until ratification is confirmed.

Preparatory technical discussions are taking place at meetings of Permanent Representatives in Brussels, supported by the Antici group, and with the presence of a representative of the Commission.

These preliminary discussions so far have covered issues including the Citizen’s Initiative procedure, External Action Service, budgetary procedures, the transition to greater co-decision, committee structures in Justice and Home Affairs, and the rules of procedure of the European Council and Council of Ministers.

The Slovenian Presidency now envisage that the following issues should be addressed over the next two months:

— Follow-up to the discussions on the Rules of Procedure of European Council and Council.
— Discussion on Council Presidency:
Respective scope of General Affairs Council and Foreign Affairs Council,
List of Council configurations,
Chairing of Working Groups in area of External Relations, and
Implementing Decision on the draft Decision contained in Declaration 9.

— Follow-up discussion on the role of COSI (Internal Security Committee) and committee structures in the Justice and Home Affairs.
— Notification to third countries and international organisations of the legal succession by the Union of the Community.

I wish to re-affirm to you that the Government will do its utmost to keep both Houses informed, across the full range of Treaty Implementation issues through Ministerial contact before any discussions of implementation issues at European Council and sectoral EU Ministerial meetings.

22 April 2008
Economic and Financial Affairs, and International Trade (Sub-Committee A)

ADMINISTRATIVE COOPERATION IN THE FIELD OF VAT (5188/08)

Letter from the Chairman to Rt Hon Jane Kennedy MP, Financial Secretary, HM Treasury

Thank you for your Explanatory Memorandum 5188/08 which was considered by Sub-Committee A at their meeting on 5 February 2008. The Sub-Committee cleared the document from scrutiny but asked me to write to you to request further information on some detail of the European Court of Auditors (ECA) Report that is attached to the Memorandum.

The Sub-Committee recall that the former Paymaster General told them that the Government preferred administrative solutions to the problem of Missing Trader Intra-Community Fraud rather than changes to the VAT system, and in particular that the Government supported information exchange between Member States (Stopping the Carousel: Missing Trader Fraud in the EU 20th Report 2006–07 (HL 101), at Q 225). The Sub-Committee noted that Table 2 on Page 20 of the ECA Report suggests that one in three requests to the United Kingdom are not responded to within 90 days. The table also identifies the United Kingdom as only the 10th best Member State for responding to information requests, and paragraph 28 of the ECA Report highlights some very delayed responses to requests from 2003 and 2004. While the Sub-Committee acknowledges that the UK receives more requests than many Member States and is by no means the worst at replying to them promptly, the Sub-Committee would welcome your comments on these statistics. The Sub-Committee would also be grateful if you were able to provide comparable figures to those in the table, for 2007.

6 February 2008

Letter from Rt Hon Jane Kennedy MP to the Chairman

Thank you for your letter dated 6 February 2008 on behalf of Sub-Committee A in which you advised me that the above document has been cleared from scrutiny, but that you would welcome my comments on some statistical information that appears in the Report.

You noted that, according to Table 2 on Page 20 of the Report, the United Kingdom is only the 10th best Member State for responding to requests for information from other Member States and that paragraph 28 of the Report highlights some very delayed responses from 2003 and 2004. You ask how this performance accords with the Government’s statements that its preferred response to VAT fraud is to improve administrative co-operation and information exchange arrangements rather than change the EC VAT system.

You will see that in 2005 the UK’s performance in meeting the 90 day response target was considerably better. The reason for the marked deterioration in performance in 2006 was that HMRC then introduced delegated arrangements for managing the exchange of information in respect of suspected VAT Missing Trader Intra-Community (MTIC) transactions. While this resulted in more direct and therefore faster exchanges in certain high risk areas, many routine exchanges were not processed as rapidly as they needed to be by staff who were new to this work. These transitional difficulties have now been addressed, and the latest provisional figures HMRC have are that they have responded to 69% within the 90 day deadline and that they expect this figure to continue to rise in future years.

Turning to the very delayed responses mentioned in paragraph 28 of the Report, as at 31 December 2007, the number of requests outstanding for more than a year has fallen significantly from 121 to 53, a drop of over 50%. I understand that most of those that are still outstanding relate to businesses that are subject to criminal investigation and that with these cases there is difficulty in obtaining the required information. However, the requesting Member State has been notified of the position.

Although it is important that deadlines for responding to information requests should be respected, the United Kingdom has expressed concerns to the Commission about simply using these annual statistics to measure a Member States’ performance. Clearly there are instances where speed is of the essence, but the quality of the information that is exchanged is also important and yet the current system totally relies on a crude deadline
and pays no regard to the results or outcomes from the information that is exchanged. This issue has now been picked up and at an EU level work will shortly begin to look at whether a more output focused performance measurement system can be developed.

In conclusion, the Government remains of the view that strengthened administrative co-operation and information exchange is one of the most effective ways of fighting MTIC fraud. That is why we are fully engaged and supportive of the discussions that are currently underway in the Commission led Anti-Tax Fraud Strategy (ATFS) Working Group.

19 February 2008

**AMENDING BUDGET 7 OF THE GENERAL BUDGET FOR 2007 (14752/07)**

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

With reference to the above mentioned EM which I submitted before Budget ECOFIN last week, I am writing to you to explain why, though regrettable, it was necessary to override scrutiny on this Amending Budget which Council adopted at Budget ECOFIN on 23 November.

Preliminary Draft Amending Budget 7 (PDAB7) to the 2007 EC Budget together with its update letter will reduce the level of funding required from Member States in 2007 by €5.976 billion (or £4.013 billion). This reduces the UK’s gross contribution to the 2007 EC Budget, after taking account of the abatement, by €1,021 million (£686 million). The EM provides further detail and explanation of the revision of forecasts for revenue and the need to decrease payment appropriations in certain budget lines.

The Commission published PDAB7 on 7 November 2007, and the accompanying update letter was issued on 12 November 2007. Regrettably, and in spite of our best efforts, it was not possible to take account of the Committees’ views in advance of the Council vote. Each year the equivalent amending budget is put forward quickly by the Presidency wishing to reduce the level of Member State funding as soon as possible and to the benefit of all Member States. 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 PDAB7. The Committee clerks were alerted to this issue.

30 November 2007

**BUDGET REVIEW**

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

Thank you for your Explanatory Memorandum SEC(2007) 1188 which was considered by Sub-Committee A at its meeting on 4 December. The Sub-Committee decided to hold the document under scrutiny, as they consider the Budget Review to be an extremely significant process. They have asked me to write to you to ask that you give oral evidence to the Sub-Committee once you have finalised the Government’s approach to the Budget Review in general, and to this consultation process in particular.

6 December 2007

**Letter from Kitty Ussher MP to the Chairman**

Thank you for your letter of 6 December inviting me to give oral evidence to Sub-Committee A on the Government’s approach to the budget review, and on the Commission’s process in particular.

I am of course happy to accept this invitation. There is a question of timing: no decision has yet been taken on how the Government intends to approach the budget review or the Commission’s process. On a more practical note, you may be aware that I will be on maternity leave from Christmas until the end of April.

Given that we still are at the very beginning of a budget review process that could last well into 2009, my suggestion is that the oral evidence session be arranged for a date after the end of April and, if you require information or evidence before that time, that my officials provide you with written answers to questions. I hope this is satisfactory to you. We will of course keep Sub-Committee A informed of how the Government intends to approach the budget review and the Commission’s process.

18 December 2007
Letter from the Chairman to Kitty Ussher MP

Thank you for your letter dated 18 December which was considered by the Sub-Committee at their meeting on 21 January.

The Sub-Committee have asked me to emphasise the importance that they attach to the EU Budget Review process. As you will be aware, the Sub-Committee prepared a report on Own Resources in 2007, and is currently inquiring into the Structural Funds. Taken with Sub-Committee D’s recent work on the Common Agricultural Policy, it should be clear that detailed examination of the EU Budget is a core part of the European Union Committee’s work. You will also be aware that the Committee aims to make its input as far “upstream” in the legislative process as is possible, and we extend this principle to our scrutiny of the budget. As a consequence, the Sub-Committee believes that the Government’s response to the Commission’s consultation document merits their close attention.

Bearing these factors in mind, the Sub-Committee have asked me to thank you for your offer to meet the Committee later in the year, but to repeat their initial request for a meeting with a Treasury Minister either before, or in tandem with, the submission of the Government’s response to the consultation document. If the Government has decided not to submit a response to the consultation then we will of course be happy to wait until after the end of April as you suggest.

23 January 2008

COMMON SYSTEM OF VALUE ADDED TAX: TREATMENT OF INSURANCE AND FINANCIAL SERVICES (16209/1/07, 16210/1/07)

Letter from the Chairman to the Rt Hon Jane Kennedy MP, Financial Secretary, HM Treasury

Thank you for your Explanatory Memorandum on documents 16209/1/07 and 16210/1/07 dated 1 April 2008. This was considered by Sub-Committee A at their meeting on 29 April. The Sub-Committee decided to hold the document under scrutiny and would be grateful if you could provide details of negotiations as they progress.

29 April 2008

ECONOMIC PARTNERSHIP AGREEMENTS

Letter from Gareth Thomas MP, Parliamentary Under Secretary of State, Department for International Development, to the Chairman

I am writing to update you about the final stages of negotiations on Economic Partnership Agreements. Unfortunately, we will be unable to complete Parliamentary scrutiny of these negotiations in advance of taking a decision in Council.

You will appreciate that as the deadline for negotiations approaches, work has inevitably become very fast moving. The Government has done its very best to keep you informed throughout the discussions. I note that you have not yet had the opportunity to consider my Explanatory Memorandum on the Regulation (14968/07). The Regulation was finalised only on 19 November, and you received my EM on 23 November. The Commons Committee cleared this EM at a Standing Committee B debate on EPAs on Monday 3 December. As indicated in the EM, I anticipate that we will agree this Regulation in Council at the next GAERC, on 10 December.

The Commission also finalised and released a Staff Working Paper entitled, “EU-ACP Economic Partnership Agreements: WTO compatible solutions that provide non-LDC ACP countries improved access into the EU market and guard against trade disruption” (294/07) on 4 December. This will also be discussed at the 10 December GAERC. I will provide you with an EM as soon as I am able, but clearly not before the GAERC.

I trust that this is satisfactory, and thank you for your continuing support. I will submit EMs on all goods-only EPAs that emerge from negotiations in due course.

6 December 2007
Letter from Gareth Thomas to the Chairman

I wanted to write to you to update you on the Economic Partnership Agreements (EPAs) between the EU and African, Caribbean and Pacific countries (ACP). Since the expiry of the Cotonou trade regime on 31 December 2007, the EU has agreed eight EPAs, based on WTO compatible trade in goods arrangements, across the ACP. As a result the 35 ACP countries that agreed to an Economic Partnership Agreement with the EU now benefit from important improvements in their access to the EU, predominantly duty and quota free access to EU markets for all goods (with the exceptions of rice and sugar which are subject to transitional arrangements ending in 2009 and 2015 respectively). According to the Overseas Development Institute up to €1.4 billion (£1.1 billion) of exports from ACPs will benefit from this.

EPAs also provide for significantly improved Rules of Origin (exporting rules to the EU) which will have positive effects on a range of products of strategic interest to the ACP—notably textiles, fisheries and other processed agricultural produce. I have already heard from a number of ACP governments about the benefits that these agreements will bring to their economies and prospects for further growth.

To comply with WTO rules, the agreements also allow for tariff liberalisation on the ACP side. The 35 signatories brought forward market opening commitments, reducing tariffs on EU imports on at least 80% of product lines over approximately 15 years with safeguard provisions should there be a threat of an import surge from the EU. This provides for up to 20% of sectors to be excluded from any form of tariff reduction. Of the countries which have not yet initialled an EPA, the majority are Least Developed Countries (LDCs), and will continue to receive duty and quota free access under the EU’s Everything But Arms scheme. We expect little trade disruption for the remaining 11 non-LDCs who have not yet signed an EPA due to the minimal trade they have with the EU, with the exception of Gabon, which has faced a rise in tariffs on around 5% of their exports to the EU. We continue to monitor this situation closely.

The next step is formal notification of the agreements to the WTO. The EU Council will need to agree to the EPA being signed. This process is just starting and I have the pleasure in attaching an Explanatory Memorandum on the proposal for a Council Decision on the EU-Cariforum EPA. We expect over the coming weeks to provide similar documents for scrutiny of the interim agreements in Africa and the Pacific. Once notification to the WTO has taken place, this will secure the improved market access commitments by making the EPA trade regime compatible with WTO rules.

I will write to you again in the summer to appraise you of progress, but in the meantime UK Government will continue to play an active role on EPAs to ensure they live up to their development objectives, which remains our overriding priority.

28 April 2008

European Court of Auditors’ Annual Report for 2006

Letter from the Chairman to the Rt Hon Jane Kennedy MP, Financial Secretary, HM Treasury

Thank you for your Explanatory Memorandum OJ C 273 regarding the Annual Report of the European Court of Auditors regarding the EC Budget for the year 2006. The Memorandum was considered by Sub-Committee A on 21 January and cleared from scrutiny. The Sub-Committee expressed their regret that another year has passed without a positive statement of achievement being issued.

The Committee noted your statement in paragraph 79 of the Explanatory Memorandum regarding the proposal to introduce a Statement of the UK’s EU expenditure, and would be grateful if you were able to supply more information about this. In particular, the Committee would like to know which will be the first year to be audited, and when will that report be published? You will recall that the Committee recommended this Statement be introduced in its 2006 Report, Financial Management and Fraud in the European Union. The Government’s response to that Report supported many of the conclusions. Although few of the conclusions called for direct action by the UK Government, the Committee understood from the response that the Government would put pressure on other EU institutions to take up the suggestions in the Report which applied to them. The Committee would be grateful if you were able to provide an update on any other improvements that have been made to financial management procedures in the EU in the past year.

23 January 2007
Letter from Rt Hon Jane Kennedy to the Chairman

Thank you for your letter of 23 January advising that the EM on the ECA Report on the 2006 EC Budget had been cleared from scrutiny by Sub-Committee A. I share the Sub-Committee’s view that it is regrettable that this was another year in which the ECA were unable to provide a positive Statement of Assurance on the majority of underlying transactions in the EC Budget.

In your letter you ask for an update on the proposal to publish an annual Statement of the UK’s use of EU funds and in particular what period the report will cover and when the report will be published. The first Consolidated Statement and Audit Opinion will cover the financial year 2006–07 and the National Audit Office is in the final stages of completing its audit. The intention remains to publish it this Spring as originally announced.

The UK statement will be prepared under International Financial Reporting Standards applicable to the circumstances and will also disclose EU spend by:

- Major EU expenditure programmes (European Agricultural Guidance & Guarantee Fund, Financial Instrument for Fisheries Guidance, European Social Fund and European Regional Development Fund); and
- Territory (England, Wales, Scotland & Northern Ireland).

The Comptroller and Auditor General will provide an opinion as to whether the Statement provides a true and fair view of income, expenditure, balances and cash flows. This opinion will be based on the audit work undertaken by the NAO on the Statement and on the underlying data provided by departments used to prepare the statement.

The Netherlands and Denmark have in the past few months published similar statements to that of the UK. At the recent meeting of the ECOFIN Council, Sweden also confirmed continuing work towards production of their initiative and we are continuing to work on persuading others of the merits of such initiatives.

My officials are in close contact with the European Commission and other institutions regarding the treatment of these national initiatives to ensure that they will be another useful tool in improving financial management of EU funds.

You also asked whether any other improvements had been made to financial management procedures in the EU in the past year. The main changes made are detailed below.

- An amended version of the financial regulation came into effect on 1 January 2007 in the light of lessons learned since the previous financial regulation was introduced in 2002. This improves upon the previous version, for example it introduces a new article (28a) on effective and efficient internal control systems and defines what this means. Article 33(2) (d) has been expanded and now requires Director Generals to provide more detailed measurable objectives and output information in Activity Statements to justify proposed changes in expenditure levels. Article 53 has been expanded to include more detail on the responsibilities of those concerned in the implementation of the budget.
- Programme regulations are being simplified for the new 2007–13 spending period. A framework is now in place for a single regulation for CAP market support measures (the Single Common Market Organisation (CMO)) to replace the existing regulations for individual products and this is being gradually introduced. Where structural measures are concerned there are now far fewer regulations than there were in force for the 2000–06 Financial Perspective. These regulations were, unlike for 2000–06, introduced in advance of the current programming period, thus allowing those responsible time to understand them before they came into force. These regulations include a requirement for each Member State to appoint an audit authority to oversee the financial management of funds. The Commission has also issued much more detailed guidance on financial control and eligibility criteria. Although these changes will need time to bed in before a direct impact is witnessed, the simplification of regulations should make a positive contribution to reducing the existing rate of error in underlying transactions.
- With effect from this year, all Member States will be required to supply the European Commission with annual summaries of available audits and declarations/financial statements on EAGGF and FIFG and Structural Fund spending. These are:
- Intended to reinforce the chain of accountability between Member States and Commission concerning the use of EU funds under shared management; something the UK strongly supports. These summaries should usefully complement national declarations in encouraging Member States to take a greater degree of responsibility over the management of co-managed EU funds.
Finally, the Commission will shortly provide its final update on the results of its Action Plan towards an Integrated Internal Framework, the roadmap for which was agreed under the UK Presidency in 2005. This will examine the impact of the different actions taken with the ambition of obtaining a positive statement of assurance and will draw conclusions for the future consolidation of the Integrated Internal Control Framework. The Government will be working to make sure this consolidation takes place and looks forward to the Court of Auditor’s assessment of the impact of the Action Plan on the 2007 Budget in its Report next year.

21 February 2008

EUROPEAN GLOBALISATION ADJUSTMENT FUND (11985/07)

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

Thank you for your letter of 17 October 2007 following consideration by Sub-Committee A of the abovementioned Commission proposal. I am pleased to provide further information on the amounts of assistance requested, the market forces affecting the car industry and other pending applications.

The two applications in question each include a co-ordinated package of eligible personalised services to be provided to redundant workers, and a breakdown of the estimated costs. The specific amounts relate to the various measures (re-training, job-search assistance) which the French authorities have chosen to provide, and towards which a financial contribution from the European Globalisation Adjustment Fund (EGF) is requested. (In accordance with the EGF Regulation, this contribution may not exceed 50% of the total estimated costs.) These measures will depend on the age, qualifications, skills and experience of the redundant workers, and so the amount of assistance requested for personalised services will vary accordingly.

The car industry is by nature a global industry subject to global market forces, and although few of the leading firms are UK-owned, seven of the world’s leading car makers—and 19 of the top twenty global parts makers—manufacture in the UK because they regard it as a good place to do business. While companies will make their own decisions as to how best organise to take advantage of the opportunities, and deal with the challenges, of globalisation, the Government also has an important role to play in ensuring that companies and workers are well placed to prosper in a competitive global environment. The UK is in a strong position to respond to the new challenges. Where businesses do fail, UK case studies show that most of those affected by redundancies, including those on a large scale, will move back into work quickly through their own job-search efforts, or with the help of Government labour market services such as Job Centre Plus and the Rapid Response Service.

The UK would be entitled to submit an application to the EGF if the relevant criteria were met. The decision on whether to submit such an application would be taken by DWP ministers in consultation with colleagues in other departments.

There are currently eight applications pending for assistance from the EGF—one from Germany, one from Finland, three from Italy, and one each from Malta, Spain and Portugal.

Also, to update you on the progress of this dossier, following several discussions in Council Budget Committee, a qualified majority emerged in support of the proposal, which was finally adopted by Council at ECOFIN on 9 October. The UK abstained.

I hope you find this helpful.

29 November 2007

EUROPEAN SYSTEM OF NATIONAL AND REGIONAL ACCOUNTS (16361/07)

Letter from the Chairman to Angela Eagle MP, Exchequer Secretary, HM Treasury

Thank you for your Explanatory Memorandum 16361/07 which was considered by Sub-Committee A at their meeting on 5 February 2008. The Sub-Committee cleared the document from scrutiny but asked me to write to you to request further information on some detail about regional accounts. As you may be aware, the Sub-Committee is currently undertaking an inquiry into the EU Structural and Cohesion Funds, and have identified the poor provision of regional data and accounts in some countries as an issue preventing evaluation and comparison of the Funds’ effectiveness. The Sub-Committee would be interested to hear of any work that is being undertaken to improve the collection and provision of regional data, and whether the Government is taking any steps to promote and bring forward this work.

6 February 2008

Letter from Angela Eagle MP to the Chairman

Thank you for your letter of 6 February requesting further information on the regional accounts data provided to meet EU requirements for structural funds allocations and future developments in regional accounts.

Under the European System of Accounts 95 (ESA95) and the current transmission requirements, the Office for National Statistics (ONS) provides regional Gross Value Added (GVA) at a geographical breakdown known as Nomenclature Units of Territorial Statistics (NUTS) 2 level. This breaks the UK down into 37 sub-regions. This requirement applies to all 27 member states of the EU.

Eurostat (the Statistical Office of the European Community) adjusts EU NUTS2 GVA estimates to NUTS2 Gross Domestic Product (GDP) and then applies purchasing power parities (PPPs) to produce regional estimates that are comparable across the EU. These estimates are then used in the allocation of EU Structural and Cohesion Funds.

NUTS2 estimates are at different stages of development across the EU with some countries having a long history of producing such estimates, while in others they are a more recent development. Eurostat will be using the Regional Accounts Task Force to help monitor NUTS 2 estimates and have offered grants to Member States to develop regional GVA inventories. These will allow Eurostat to assess the quality of the sources and methods that underlie NUTS 2 estimates across the EU. The UK fully supports this approach to improve the quality of EU estimates.

The full range of regional GVA estimates and a regional GVA methodology guide are available on the ONS website: http://www.statistics.gov.uk/statbase/Product.asp?vlnk=14650

28 February 2008

EUROPEAN UNION SOLIDARITY FUND (8323/06)

Letter from Tom Watson MP, Parliamentary Secretary, Cabinet Office, to the Chairman

Thank you for your letter of 25 July 2006. I am sorry not to have replied before. However, we have no record of it having been received in the Cabinet Office.

As you may be aware, the European Commission has withdrawn the proposal for a regulation establishing the EU Solidarity Fund. However, recent natural disasters in the EU including floods here have drawn attention to the role of the Solidarity Fund and it is therefore an opportune moment to respond specifically to the questions you raised.

The first question was whether the Solidarity Fund (EUSF) has demonstrated any added value since the initial payments were made in the aftermath of the flooding in central Europe in 2002. The Government supported establishing the EUSF in 2002, recognising that the Community’s cohesion objectives gave it a role alongside Member States in contributing to emergency relief in the event of major disasters. HMG will continue to seek Commission assurances that each application to the EUSF aligns with Regulation provisions.

The Government believes that the EUSF has shown added value in supporting Member States in the event of major disasters, distributing over €1 billion to 12 Member States since 2002. Indeed HMG applied for EUSF assistance following the floods of 2007 and the Commission has proposed mobilising €162.4 million for this purpose.

The second question was where unspent money allocated to the Fund has gone. The EUSF has no pre-allocated budget, so any EUSF mobilisation up to the €1 billion a year ceiling is usually met by transfers from other budget lines. If annual grants are lower than this annual budget ceiling, resources continue to be spent on pre-existing budget commitments. Any money allocated to the EUSF but unspent by the beneficiary Member State is to be recovered by the Commission in line with EUSF Regulation provisions.

The third question asked for my analysis of the proposals to expand the Fund to include public health threats, which the Committee considered to have some justification. The main elements of the proposal were: (a) to widen the scope of the Fund to enable it to be deployed for disasters other than of natural origin; (b) to allow for advance payments from the Fund to be made; (c) to speed up the rate of response and the visibility of Community support; and (d) to simplify the intervention criteria.

When the Regulation was proposed a significant number of Member States including the UK raised concerns about it. In particular, there would be additional budgetary implications of widening the EUSF’s scope, simplifying its eligibility criteria and lowering its claims thresholds. The Government recognises that widening the EUSF’s original objectives could in principle be helpful in addressing a broader range of potential risks.

However, with reference specifically to public health threats there are other relevant Community instruments. These include provisions in the Civil Protection Mechanism concerning relevant natural and man-made disasters. They extend to budget lines under the headings of Health and Consumer Protection, which concern enforcement of product safety rules including advice on risks of injury or exposure to chemicals; the Public Health Programme, which includes EU-wide planning and crisis management for cost effective protection against major threats such as pandemics or bio-terrorism; the European Centre for Disease Prevention and Control; the European Food Safety Authority; and other measures concerning food safety and animal health.

The elements in the proposal on speeding up the rate of response or even providing advance payments might also be very useful changes to the Regulation, given the time it currently takes to secure financial support from the EUSF. In summary, the Government’s view is that it would be preferable to seek to improve these specific instruments and policies before looking to extend the scope of the EUSF, which was designed for a quite different purpose.

16 February 2008

EXTERNAL TRADE WITH NON-MEMBER COUNTRIES (15055/07)

Letter from the Chairman to the Rt Hon Jane Kennedy MP, Financial Secretary, HM Treasury
Thank you for your Explanatory Memorandum 15055/07 which was considered by Sub-Committee A at their meeting on 11 December. The Sub-Committee are particularly interested in this topic and agree with you that an increase in the statistical burden on businesses should be resisted. The Sub-Committee decided to hold this item under scrutiny and would be grateful if you could provide updates on negotiations when they are available. The Sub-Committee would also be grateful if you could provide the full impact assessment when it is prepared.

11 December 2007

Letter from the Rt Hon Jane Kennedy MP to the Chairman
Thank you for your letter of 11 December regarding the above proposal.

I am now able to update you on the negotiations regarding the proposed regulation which was discussed for the first time at a Council Working Party in Brussels on 15 January.

There was considerable discussion on Articles 5, 6, 7, 8, 10 and 13. Six other Member States shared the UK’s reservations about providing quota information but there was no support for the specific concerns in Articles 5 and 6 about providing data on the Currency of Invoicing for exports and the Nature of Transaction Code. The Commission will produce a revised draft of these Articles and they will then be subject to further consideration. Articles 1, 2, 3, 4, 9, 11 and 12 were all adopted.

The Impact Assessment setting out an estimated cost of the regulation to UK business is provided (not printed).

23 March 2008

Letter from the Chairman to the Rt Hon Jane Kennedy MP
Thank you for your letter and the Impact Assessment of 23 March 2008. These were considered by Sub-Committee A at their meeting on 22 April. The Sub-Committee took note of your report on the progress of negotiations and decided to continue to hold the item under scrutiny. The Sub-Committee would be grateful if you could provide updates on negotiations as they continue.

22 April 2008

HOLDING, MOVEMENT AND MONITORING OF EXCISE PRODUCTS (6615/08)

Letter from the Chairman to Rt Hon Jane Kennedy MP, Financial Secretary, HM Treasury
Thank you for your Explanatory Memorandum 6615/08 which was considered by Sub-Committee A on 1 April. The Sub-Committee decided to hold the document under scrutiny and would be grateful if you could provide information on the progress of negotiations as these occur.

2 April 2008
INSURANCE AND REINSURANCE (11978/07)

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

I am enclosing a copy of the Committee’s report on this Explanatory Memorandum which is published today. The Report largely welcomes the Directive, but as you will see from paragraph 35, the scrutiny reserve has not been lifted. Sub-Committee A took this decision as they would like to receive further information on the issues that they have highlighted in the report’s conclusions, and in particular on the predicted operation of the disclosure requirements discussed in paragraph 23. The Sub-Committee would also like to see the Regulatory Impact Assessment when it is available. I would be grateful if you could focus on these issues in the Government’s response to the Report.

The Chairman of Sub-Committee A has also asked me to express her gratitude to your officials for the help that they extended to the Sub-Committee during its work on this report.

6 February 2008

INTERNATIONAL TAX DIALOGUE (12010/07)

Letter from Rt Hon Jane Kennedy MP, Financial Secretary, HM Treasury, to the Chairman

This letter is in response to your Committee’s request for further information with regard to the Commission’s proposal for International Tax Dialogue.

As presented in the EM of July 07 (12010/07) the Government objected strongly to the Commission’s proposal based on the following main points:

I. The potential extension of Community legal competence in the area of tax;

II. The duplication of effort with the existing members of the International Tax Dialogue; and

III. The marginal benefit given the costs attached.

The Government is content with the representation the UK enjoys by the existing ITD participating members such as OECD, World Bank and IMF. We consider there to be no additional value in being represented by another institution (i.e. EU Commission). In addition, the estimated budget of € 130 000 (£ 87,272) assigned to the Commission’s membership at the ITD does not correspond to the minimal benefits it would bring to the UK and the potential risk to the national competence in the area of tax. In our Memorandum we referred to the Commission as the potentially “fourth participating organisation” in light of World Bank, IMF and OECD being the other three organisations of the similar status and representing power. It is not known to us from the Commission’s proposal whether the Commission initiated the decision to join, or whether it was extended an invitation by the ITD.

As you may be aware from my letter to the Chair of HOC European Scrutiny Committee the Commission’s proposal was discussed at the Council Tax Working Group on 19 September where the UK Government presented our arguments in opposition to the Commission’s proposal. We received significant support from the majority of other Member States, all strongly opposing this proposal. This led the Presidency to conclude that there was no merit in further discussion of the proposal.

While there are no plans by the current Presidency to include this on their Presidency agenda, I can confirm that the Government has no intention of supporting this proposal should it come up for discussion again in the future. Should, however, any of the existing conditions of the proposal change in the future I would write to your Committee in light of the proposed changes and the Government’s initial response.

I hope this letter responds satisfactorily to your request.

15 December 2007

MISSING TRADER INTRA-COMMUNITY FRAUD

Letter from Rt Hon Jane Kennedy MP, Financial Secretary, HM Treasury, to the Chairman

Thank you for your letter of 23 October 2007 about the 2006–07 estimates of attempted Missing Trader Intra-Community (MTIC) fraud, which were published alongside the Pre-Budget Report.

As the Paymaster General has previously explained to the Committee, statistics published by the Office for National Statistics, using HMRC data on the UK’s overseas trade, provide an indication of the scale and trend of trading activity associated with attempted MTIC carousel fraud. These statistics, along with other

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1 Solvency 11, 6th Report of Session 2007–08, HL Paper 42.
operational indicators, suggest most of the MTIC related trading activity in 2006–07 took place in the first quarter.

**Estimates of Impact of MTIC on Balance of Payments**

<table>
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<tr>
<th>Quarter ending</th>
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<tbody>
<tr>
<td>September 2004</td>
<td>0.6</td>
</tr>
<tr>
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</tr>
<tr>
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<tr>
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<td>0.3</td>
</tr>
<tr>
<td>September 2007</td>
<td>0.3</td>
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</tbody>
</table>

The total value of overseas trade associated with MTIC was estimated at £10.7 billion in the first quarter of 2006–07, compared with a total of £2.5 billion for the rest of the year. This, together with operational information on suspect trading activity, is the basis of our confidence in asserting that MTIC fraud reduced dramatically in response to HMRC’s interventions.

More recent data suggest that the fraud remains at historically low levels, with MTIC-related trading activity estimated at £0.6 billion in the first six months of 2007–08. I hope that this clarifies the evidence provided by the Paymaster General in February this year.

You asked whether the fraud might have mutated to other sectors. Indicators do not suggest any area of significant new exploitation; however, we remain vigilant and continue working to proof our strategy against potential mutations in the goods, people or trading behaviour associated with MTIC fraud.

You also asked about the verification by HMRC of suspect VAT repayment claims. Those whose claims are selected for verification remain a tiny fraction of the 1.9 million VAT-registered businesses in the UK. The number and value of claims selected for verification, as well as the number of new traders affected by this activity, have fallen in recent months, reflecting the general and significant reduction in the pattern of fraud-related trading activity. The additional traders affected have been identified because of suspect trading patterns indicative of MTIC fraud. As soon as HMRC identifies a claim, or part-claim, associated with genuine business transactions, overheads or expenses, it repays those sums. To date, around 1% by value of the VAT withheld under the verification programme has been found to be correctly claimed and properly payable.

I hope that this answers your questions and reassures the Committee about our commitment to the continuing success of the MTIC strategy.

10 November 2007

**MULTI-ANNUAL FINANCIAL FRAMEWORK: BUDGETARY DISCIPLINE AND SOUND FINANCIAL MANAGEMENT (13237/07)**

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

Thank you for your letter dated 23 October 2007 concerning my EM on the Commission’s proposal to revise the multi-annual financial framework and for the support you express for the Government’s position.

I take note of your on-going hope that a PPP deal can be struck for Galileo. The Government has always argued strongly for the involvement of the private sector funding through a PPP arrangement as the most cost effective way of delivering the project. Regrettably, however, since the end of negotiations between the private sector consortium and the Commission in spring this year, the argument that the project should be delivered...
through public procurement has gained increasing support. If the majority of our partners wish to proceed with the public procurement of a full operating capability for Galileo, we will nevertheless work to retain as many of the financial and project management benefits that the PPP structure offered as possible. These include: the incentive to rapidly reach full service commencement; the optimisation of revenue generation potential; and strong project and risk management through effective governance. We also continue to believe that the Community should be looking for ways to involve private sector expertise and funding at the earliest opportunity. The Commission has said that they share this view and has suggested the option of a PPP model for the operation and replenishment of the system.

I agree that a rigorous evaluation of the EIT should take place before funding is expanded. The Government has indeed consistently argued for a phased approach to the establishment of the EIT. We have been successful in ensuring that it will initially only be made up of a maximum of 3 Knowledge and Innovation Communities so that lessons can be learned before progressing further with the project. We will continue to argue that before the EIT and its budget is further expanded, a thorough evaluation of the organisation’s performance should be undertaken.

You ask whether the Government is content with the scale of the proposed reductions to the margins of Headings 2 and 5 in 2008. The Government is concerned with the Commission’s proposal to use the margins of other headings in 2008 to fund new requirements of the Galileo programme. We remain committed to the principle that margins should ideally be maintained to cater for unforeseen needs of existing programmes in year.

An initial discussion on Galileo and the Commission’s funding proposal took place at the October ECOFIN Council when this was covered under Any Other Business. The Government’s concern with the Commission proposal was shared by a number of Member States. The Presidency agreed that a full agenda item should be devoted to the Commission’s financing proposal in an upcoming ECOFIN. It is on the agenda for November ECOFIN.

13 November 2007

Letter from the Chairman to Kitty Ussher MP

Thank you for your letter dated 13 November regarding EM 13237/07. This was considered by Sub-Committee A at their meeting on 20 November and the item was cleared from scrutiny. The Sub-Committee hope that the Government will continue to press its case on these matters, and in particular hope that the margins are maintained to cater for unforeseen needs of existing programmes in future years.

The Sub-Committee would be grateful if you could inform them, in due course, of the outcome of the discussions in the various Council meetings.

21 November 2007

Letter from Kitty Ussher MP to the Chairman

Thank you for your letter of 21 November which I received on 23 November.

I represented the UK at Budget ECOFIN on 23 November. At this meeting, and subject to the European Parliament’s 2nd Reading, the Council and European Parliament’s Budget Committee reached agreement on the 2008 EC Budget. I will write to you in the coming days to report formally to your Committee on the outcome of this agreement.

The multi-annual financing of Galileo was one of the principal points of discussion at the Budget ECOFIN. The UK’s concerns at the proposal to revise the multi-annual financing framework, and our view that a budget disciplined approach should require reprioritisation of funds from within Heading 1a, as outlined in EM 13237/07, have been set out consistently, including at the July, October and November ECOFINs. I again made these arguments during Friday’s Council 2nd Reading discussion.

However, during the course of the Council’s conciliation with the European Parliament, it became apparent that no agreement would be reached on the 2008 EC Budget without also reaching agreement on the multi-annual financing of Galileo.

Agreement was therefore reached, subject to subsequent formal approval by the European Parliament and Council, on the substance of the Commission’s proposal to amend the Interinstitutional Agreement (IIA) of 17 May 2006, as a means of financing the Galileo project and the European Institute of Technology (EIT)—the subject of EM 13237/07, your letter of 21 November to me, and a House of Commons European Standing Committee debate on Monday 26 November. I am therefore writing to you immediately on this issue.

*“The Interinstitutional Agreement between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management”.*
GALILEO AND EIT FINANCING

I took the view that it was in the UK’s best interests to reach agreement on the multi-annual financing of Galileo and the EIT at Friday’s meeting, in the context of an acceptable overall deal on the 2008 Budget when it became clear that a number of member states were only aligning themselves with a potential blocking minority for tactical reasons in order to pursue industrial interests, which were divergent from our own. For this reason, I do not believe that a blocking minority against the revision of the Financial Perspective could have been sustained after ECOFIN Budget.

My judgement was that in the absence of a sustainable blocking minority capable of preventing revision of the multi-annual framework, the UK’s top priorities should be to: minimise the scale of any revision, impose the greatest degree of budget discipline on the Galileo project going forward, and secure the UK’s other objectives in the 2008 Budget.

As a result, the UK, working in close partnership with Dutch and Swedish colleagues, secured a one-third reduction in the size of the multi-annual framework revision; a commitment from the Council and the European Parliament that the 2007–13 multi-annual framework would not be revised subsequently to finance Galileo; a recognition that this revision is exceptional and does not set a precedent for future years; and that procurement of the Galileo work streams, currently the subject of negotiations in the Transport Council, should be open and competitive, thereby encouraging cost discipline while being fair to all commercial interests, including the UK’s; and a doubling of the amount re-allocated from existing programmes within heading 1a. The maximum additional cost to the UK of the multi-annual financing solution for Galileo and the EIT is consequently reduced by an estimated £40–£45 million, or £27–£31 million (€325–€330 million, or €226–€230 million, maximum additional cost). I believe the agreement reached represents the best possible outcome under the circumstances.

Annex A gives a detailed breakdown of the financing solution. The relevant text of the accompanying joint Council, European Parliament and Commission Declaration is at Annex B.

NEXT STEPS

The European Parliament will formally agree the non-compulsory expenditure part of 2008 EC Budget in their Second Reading culminating in their plenary session on 13 December. This will mark the formal adoption of the Budget.

The Commission will also bring forward the formal, final legal proposal for the revision of the multi-annual financial perspective, as amended by Budget ECOFIN, which we expect will be agreed at COREPER II on 5 December and then formally agreed at the next available ministerial Council. This will then be forwarded to the European Parliament for formal agreement to the revision of the financial perspective, also likely to be on 13 December.

28 November 2007

ANNEX A

SUMMARY OF AGREEMENT REACHED WITH THE EUROPEAN PARLIAMENT, BUDGET ECOFIN 23 NOVEMBER 2007

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<th>Source of funding</th>
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<td>Programme within Heading 1a</td>
<td>400</td>
<td>279</td>
</tr>
<tr>
<td>Funds re-allocated from non co-decided programmes within heading 1a</td>
<td>200</td>
<td>139</td>
</tr>
<tr>
<td>2008 Flexibility Instrument</td>
<td>200</td>
<td>139</td>
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<tr>
<td>Heading 1a margin</td>
<td>300</td>
<td>209</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>2,700</strong></td>
<td><strong>1,881</strong></td>
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</tbody>
</table>

NB: Sterling figures may not add up due to rounding.

---

8 Sterling figures converted at the exchange rate on 30 September, as in EM 13237/07.

9 €1 = £0.6968 Sterling figures converted at the exchange rate on 30 September, as in EM 13237/07.
ANNEX B

DECLARATION AGREED BY EP, COUNCIL AND COMMISSION

The European Parliament, the Council and the Commission:

Affirm Financial Perspective revision and the use of funds from the margin of the previous year is an exceptional measure and will in no way set a precedent for future revisions.

Affirm the principle to the commitment to robust and fair competition in the programme to help ensure cost control, mitigation of risk from single supply, value for money and improved efficiency. All work packages for Galileo should be open to maximum possible competition, in line with EU procurement principles, and to ensure procurement in space programmes are more widely open to new entrants and SMEs. This should be without prejudice to the details elaborated in Transport Council.

Affirm that any further call on resources concerning Galileo can only be considered if accommodated within the ceilings of the agreed Multi-annual Financial Framework and without reverting to the use of Points 21–23 of the Inter-institutional Agreement of 17 May on budgetary discipline and sound financial management.

MUTUAL ASSISTANCE BETWEEN ADMINISTRATIVE AUTHORITIES (5048/07)

Letter from Rt Hon Jane Kennedy MP, Financial Secretary, HM Treasury, to the Chairman

Further to my letter of 26 July, I am writing to update you further on the position regarding negotiations for the proposed amendment to Regulation 515/97. This proposal has not yet cleared scrutiny by your Committee, but is likely to move rapidly towards adoption.

STAGE REACHED IN DECISION-MAKING PROCESS

Discussions in the Council’s Customs Union Group were concluded on 12 December, and the text of a revised proposal is expected to be tabled on the Coreper agenda for 10 January. I am enclosing a copy of the latest version, DS 7121/6/07 Rev 6 for your information. This Regulation is subject to the co-decision procedure with the European Parliament, but I understand that the Parliament is likely to accept amendments made by the Council working group, and agree the text without a second reading. Progress might therefore be rapid in early 2008.

OPPOSITION TO CONTINUED INCLUSION OF FISCAL MATTERS

You will recall my concerns about the proposed inclusion of fiscal matters in this Regulation, which is subject to qualified majority voting. The current text of the proposed amendment no longer contains any reference to fiscal matters in the definition of “customs legislation”. However, a new paragraph 2a is included, which includes a list of information which may be shared between Member States and with the Commission. Sub-paragraph 2a(f) specifies “information whether the VAT identification number and/or excise duties identification number is in use”.

Whereas the VAT and excise identification numbers are in the public domain, the information needed to establish whether the numbers are “in use” draws on non-public fiscal data. Though the current text represents a great improvement on the Commission’s original proposal and the reference to fiscal matters is no longer stated explicitly, the Government guards its tax red line carefully and I am not satisfied that our position on this is fully protected if 2a(f) is included. For this reason, the UK did not support the proposal at the 12 December official level Customs Union Group meeting. Ireland and Lithuania also opposed the text for similar reasons, with Germany opposing for different reasons. The Government intends to vote against the proposal in Council.

There is no prospect of a blocking minority against the proposal emerging between now and Coreper and Council meetings.

OTHER ASPECTS OF THE PROPOSED AMENDMENT

Despite the UK’s intention to vote against this proposal, it is important for me to place on record the importance which we place on efficient and effective customs co-operation between Member States and with the Commission. Indeed, the updating of data protection provisions and the provision of a legal base allowing modernisation of the IT systems used to support customs co-operation is very welcome. We agree with the Commission that the Regulation needs to be amended, and our objection is on a point of principle.

\(^{10}\) Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 49.
Regarding more general concerns raised in the Explanatory Memorandum, positive progress has been made during negotiations and I can report as follows:

Data Protection: The Office of the Information Commissioner and the Ministry of Justice have been consulted and can accept the current text, which is line with the provisions existing Data Protection Directives, transposed into UK law. The proposed Article 34 confirms the over-arching data protection provisions for the Regulation. Most of the proposed amendment relates to exchange of information, but the following Recitals and Articles are of particular interest from a Data Protection standpoint: Recitals 7, 12a, 17, 17a, 18 and 22; and Articles 2(1), 18a, 25, 27, 35, 37 and 41d.

Setting up a European Data Directory: This is covered in Recitals 14 to 16 and Article 18a, and will allow the Commission to negotiate access to databases of freight movement information around the world, making the information available to all Member States. The initiative will be fully funded from the Commission budget. Officials have received assurances from the Commission that though they will produce value-adding reports which Member States may use, there is no intention to use these outputs to task national customs services. The text at Article 18a now includes the phrase “Without prejudice to the competences of the Member States”.

Officials have also been reassured to learn that national liaison officers will not need to be posted to Brussels. Those with the necessary accreditation will be provided with secure electronic access.

Participation in the Data Directory will be optional, and Member States will be free to negotiate their own, additional, information arrangements on freight movements from the same or different suppliers. Though HM Revenue and Customs already has some successful arrangements of its own in place, it is possible that additional information from the Data Directory may prove useful. There is also the argument that the Customs Union as a whole should benefit from less well resourced Member States’ use of facilities previously unavailable to them.

Giving prior consent to forward information to a third country: Recital 17a and Article 19 apply. We are satisfied that changes to the text of Article 19 should ensure appropriate safeguards. There is provision for prior agreement from Member States where appropriate. The text now also includes a phrase to ensure that third countries offer safeguards equivalent to those in the EU, “In all cases, it shall be ensured that the third country concerned offers a degree of protection equivalent to that laid down in Articles 45(1) and (2)”.

Using data on the Customs Information System for analysis purposes: Article 2(1) is of most relevance here. The Commission has assured Member States that their activities in analysing data held across the various functions of the Customs Information System are without prejudice to the competence of Member States; and they will not attempt to direct Member States’ customs resources in response to analytical findings. The Commission is best placed to analyse Community-wide data, and—especially if the anticipated IT upgrades increase Member States’ usage levels—their outputs could be useful. Given the Commission’s reassurances, we are satisfied that the analytical role is appropriate.

Creating a customs investigations database (“FIDE”): Title Va will establish this database with the objective of flagging up matches in customs services’ nominal data (e.g. names, car number plates) on current and past investigations. This should highlight links between Member States’ enquiries, enabling appropriate information-sharing and wider co-operation. In principle, the idea is a good one. Concerns about being obliged to share sensitive data have been allayed as the text now clarifies that participation in the initiative is voluntary—Article 41b states that “The competent authorities may enter data from investigation file in the FIDE…” We are not completely sure that at the margins, all risks of duplication have been removed. However, we are assured that steps are being taken to avoid Member States needing to enter data to competing systems operated by different parts of the Commission in future.

Financial Implications

We do not believe that significant additional costs will accrue to Member States as a direct result of the amendment, and it is hoped that the new generation of IT systems permitted by this legislative change might alleviate problems that HM Revenue and Customs have had implementing upgrades with previous generations of systems.

I trust that the information in this letter will assist the Committee in completing its scrutiny of the proposed amendment to Regulation 515.

19 December 2007
ECONOMIC AND FINANCIAL AFFAIRS, AND INTERNATIONAL TRADE (SUB-COMMITTEE A) 17

PASSENGER CAR RELATED TAXES (11067/05)

Letter from Angela Eagle MP, Exchequer 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. As the Financial Secretary informed you on 30 April 2007, the Austrian and Finnish Presidencies chose not to discuss the dossier, but negotiations resumed under the German Presidency. I am pleased to provide you with an update on the progress of these negotiations.

The German Presidency held an informal discussion of the dossier at ECOFIN on 8 May, at which it did not receive a clear political steer for future work in this area. Nonetheless, the Portuguese Presidency has sought to make technical progress on the document, holding four Working Group meetings in preparation for a formal discussion at the 13 November ECOFIN.

The Commission proposal had 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 Portuguese Presidency went some way to recognising the subsidiarity concerns of many Member States by removing elements to bring about the abolition of registration taxes, and reducing the commitments required from Member States to introduce a CO2 element. However, there was not a clear political steer in support of the revised proposal at ECOFIN, and the Portuguese Presidency decided not to pursue further work on this dossier.

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. We therefore welcome the Portuguese Presidency’s decision not to pursue further work on this dossier.

I will keep you informed of developments on this dossier. At present, the incoming Slovenian Presidency has not indicated plans to hold further discussions on this dossier.

10 December 2007

PRELIMINARY DRAFT BUDGET (PDB) OF THE EUROPEAN COMMUNITIES 2008

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

Thank you for your letter of 10 October 2007 confirming that sub-Committee A has considered the update I provided on the outcome of Budget ECOFIN on 13 July. The European Parliament (EP) recently concluded its first reading of the 2008 Draft EC Budget and I am pleased to update you on the amendments adopted by the EP in plenary session on 25 October. In addition, this update covers two Amending Letters to the Preliminary Draft Budget (PDB) presented by the Commission since Council’s first reading which will be discussed and adopted during the course of the 2008 budget procedure.

THE EUROPEAN PARLIAMENT’S AMENDMENTS

The EP’s amendments propose a total of €129.7 billion in commitment appropriations, and €124.2 billion in payment appropriations, representing increases of €1.287 billion (or 1%) for commitments and €4.786 billion (or 4%) for payments over the Draft EC Budget. The amount of commitment appropriations corresponds to 1.03% of EU GNI, and is under the 1.24% EU GNI ceiling set by the Community’s Own Resources Decision. Following the EP’s amendments, the total margin left under the Financial Perspective (FP) ceiling for commitments is €2.615 billion.

Under Heading la (Competitiveness for growth and employment), the EP increased commitment appropriations by €342.3 million and payment appropriations by €1.003.1 million compared to the Draft Budget, leaving a margin of €0.64 million below the FP ceiling for commitments. These increases for the large part reverse the Council’s reductions to the PDB; the EP amendments to the Draft Budget also go beyond PDB levels for certain budget lines including:

— Galileo—placing €739 million in commitments and €400 million in payments into the reserve in support of the Commission’s financing proposal—(these do not feature in the overall totals or margin

12 Correspondence with the Ministers, 11th Report of Session 2008–09, HL Paper 92, p 11.
13 For Sterling equivalents of key figures quoted, please refer to the tables in Annex 1.
figures because they have been placed in reserve pending a Council agreement on the issue of Galileo and EIT financing);
— Co-operation programme (Energy and Environment)—increased payments by €150 million;
— Capacities programme (Research Infrastructures)—increased payments by €50 million;
— People programme—increased payments by €100 million;
— Lifelong Learning—increased payments by €100 million.

The EP amendments bring the total commitment and payment appropriations for Heading la to €10.346 billion and €9.993 billion respectively.

Under Heading 1b (Cohesion for growth and employment), the EP left commitment appropriations untouched as Council had done, leaving a margin of €11.1 million. The EP increased payment appropriations by €2,322.7 million, above the Draft Budget. Again, this increase reverses the Council’s reductions to the PDB and also goes beyond PDB levels for certain budget lines including:
— European Social Fund—increased payments by €361.4 million;
— European Regional Development Fund—increased payments by €1,252 million;
— Cohesion Fund—increased payments by €386.8 million.

The EP amendments bring the total commitment and payment appropriations for Heading Ib to €46.878 billion and €42.447 billion respectively.

Under Heading 2 (Preservation and management of natural resources), the EP increased commitment appropriations by €664.6 million and payment appropriations by €670.7 million compared to the Draft Budget, leaving a margin of €2,412.8 million below the FP ceiling for commitments. The EP restored PDB appropriation levels for the budget lines which Council had targeted for reductions and further increased the budget lines Council had protected relating to food programmes for deprived persons, the free distribution of fruit and vegetables and school milk. The EP amendments to the Draft Budget also go beyond PDB levels for certain budget lines including:
— Promotion measures—Payments by Member States—increased commitments and payments by €4.772 million;
— Specific aid for bee-keeping—increased commitments and payments by €4.264 million;
— LIFE! (Financial Instrument for the Environment)—increased payments by €3.6 million;
— Financial contribution to the Member States for expenses in the field of control—increased commitments by €8 million and payments by €10 million.

The EP amendments bring the total commitment and payment appropriations for Heading 2 to €56.387 billion and €54.888 billion respectively.

Under Heading 3a (Freedom, security and justice), the EP increased commitment appropriations by €41.3 million and payment appropriations by €55.048 million compared to the Draft Budget, leaving a margin of €18.966 million below the FP ceiling for commitments. The EP reversed the Council’s reductions to the PDB on several programmes and agencies. For the FRONTEX agency (management of operational co-operation at external borders), the EP increased both commitments and payments by €31 million above the Draft Budget, more than doubling the levels proposed in the PDB. Increases above the PDB were also proposed for the Prince programme. The EP amendments bring the total commitment and payment appropriations for Heading 3a to €728.034 million and €533.196 million respectively.

Under Heading 3b (Citizenship), the EP increased commitment appropriations by €30.9 million and payment appropriations by €58.420 million compared to the Draft Budget, leaving a margin of €157,000. The EP restored PDB appropriation levels and proposed further increases above the PDB for budget lines including:
— Civil Protection Financial Instrument—increased commitments by €2.11 million and payments by €1.63 million;
— Pilot scheme for artist mobility—increased commitments and payments by €1.5 million;
— Special annual events—increased commitments and payments by €1.88 million.

The EP amendments bring the total commitment and payment appropriations for Heading 3b to €614.843 million and €708.253 million respectively.

Under Heading 4 (The EU as a global partner), the EP increased commitment appropriations by €112.2 million and payment appropriations by €580.1 million compared to the Draft Budget, leaving a low margin of €15,000 below the FP ceiling for commitments. As a result of the EP’s amendments, the €239.2 million
payment appropriations for the Emergency Aid Reserve are effectively brought back on budget (accounting for a large part of the overall payments increase). The EP approved the Commission’s Amending Letter 1 (more explanation of the detail below) which provided for substantial additional appropriations for Kosovo and Palestine. The EP proposes further commitment appropriations of €10 million for both Kosovo and Palestine. The other significant EP amendment reduces commitment appropriations for the CFSP by €40 million while calling for the Flexibility Instrument to be used to provide €87 million in commitments for the CFSP and other priorities (Kosovo €20 million, Palestine €20 million, the Global Fund to fight AIDS, Tuberculosis and Malaria €4 million, and Information programmes for non-member countries, €3 million). The EP restored PDB appropriation levels and proposed further increases above the PDB for budget lines including:

- Co-operation with third countries in the areas of migration and asylum—increased commitments by €8 million and payments by €10 million;
- Regional and horizontal programmes—increased payments by €25 million;
- Adjustment support for sugar protocol countries—increased commitments by €5 million.

The EP amendments bring the total commitment and payment appropriations for Heading 4 to €7.241 billion and €8.133 billion respectively.

Under Heading 5 (Administration), the EP increased commitment appropriations by €95.6 million and payment appropriations by €95.4 million compared to the Draft Budget, leaving a margin of €171.140 million. The EP marginally increased its own overall administration appropriations (commitments and payments) by €16.12 and that of the European Economic and Social Committee by €0.55 million. In doing so it did not fully restore the reductions proposed by Council in the Draft Budget to the administration budgets of a few other EU institutions and bodies, namely the Court of Justice, the Court of Auditors, the Committee of the Regions and the European Data Protection Officer.

The EP amendments bring both the totals for commitment and payment appropriations for Heading 5 to €7.286 billion.

The EP made no amendments to Heading 6 (Compensations) and appropriations remain at €206.6 million for both commitment and payment appropriations.

Tables summarising the changes between the PDB, Draft Budget and the EP’s first reading amendments are set out in Annex 1 to this letter.

UK Approach and the Next Stages of the EC Budget Procedure

Following discussion of the EP’s amendments in the Council’s Budget Committee and subsequently by Ambassadors in Coreper, a conciliation session between the Council and the EP will take place on 23 November during Budget ECOFIN. Both sides will attempt to reach consensus on the elements of the EC Budget. Council will then conclude its second reading of the 2008 EC Budget, when compulsory expenditure (mainly spending on agriculture) will be settled. The budget will then pass back to the EP for its second reading on 13 December, at which non-compulsory expenditure (the remainder of the budget) will be settled and the 2008 EC Budget finally adopted.

The Government’s objectives for the forthcoming Council discussions will remain consistent with those outlined to you in previous correspondence and with our position in the earlier stages of the negotiations—principal to reach agreement in as many areas as possible in a way which maintains budget discipline and does not compromise sound financial management. We will seek to reduce the overall level of payment appropriations to bring the budget closer to the likely implementation rate and to reduce the likelihood of another large surplus. The Government is very concerned by the Commission’s proposal to revise the 2007–2013 Financial Perspective in the first year of its existence. We will work with like-minded Member States to press the Commission for further justification of this measure and seek to ensure that all alternative options to revising the Financial Perspective have been thoroughly explored. The Government will also work to agree allocations for Afghanistan and Iraq and other UK priority areas (Adjustment Support for Sugar Protocol Countries, Co-operation with Developing Countries in Asia, Humanitarian Aid and CFSP).

Amending Letter No. 1

Amending Letter No. 1 (SEC(2007) 1140 final) to the 2008 PDB was presented by the Commission and discussed by Council Budget Committee on 27 September and concerns the mobilisation of funds to support Kosovo and the Palestinian Authority and the creation of a new budget article for Damage requests resulting
from legal procedures against the Commission’s decisions in the field of competition. The proposed amendments with financial impacts are as follows:

- An additional €120 million in commitment appropriations and €60 million in payment appropriations to support Kosovo through the “macroeconomic assistance” and “transition and institution-building assistance” budget lines;
- An additional €142 million in commitment appropriations and €85 million in payment appropriations to support the Palestinian Authority through the “European Neighbourhood and Partnership financial assistance to Palestine, the peace process and UNRWA” budget line.

When this Amending Letter was discussed in Council Budget Committee a number of Member States including the UK found the creation of the new budget article contentious given that the financial impact could not be reasonably established and so it has been removed. Satisfied by the evidence that the amounts were justified, Member States approved Amending Letter No. 1.

**Amending Letter No. 2**

Amending Letter No. 2 (SEC(2007) 1454 final) to the 2008 PDB was presented by the Commission and initially discussed by Council Budget Committee on 6 November and concerns a downward revision for agriculture expenditure based on the latest economic data available on market factors and legislative decisions since the PDB was presented. The revision results from a combination of more optimistic forecasts relating to agricultural markets, voluntary modulation (a transfer from direct aids to rural development) requested by the UK, additional revenue from the milk superlevy and from 2007 carry-over, and the higher euro-dolar exchange rate between July and September. The proposed amendments with financial impacts are as follows:

- An overall reduction of €970.3 million in commitment appropriations and €1,331.3 million in payment appropriations to Heading 2 (Preservation and management of natural resources);
- Within which the voluntary modulation requested by the UK amounts to an increase of €362 million in commitments for Rural Development.

Amending Letter No. 2 will be further considered by Member States at Budget ECOFIN as part of Council’s second reading. A sufficient number of Member States including the UK is satisfied with the evidence provided by the Commission and a vote in favour at Budget ECOFIN is likely.

*20 November 2007*
### Table 1

**Summary of 2008 PDB, Draft EC Budget and EP First Reading—EUR Million**

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<tr>
<th>Heading</th>
<th>Financial Framework Ceiling</th>
<th>2008 PDB</th>
<th>2008 DB Council First Reading</th>
<th>EP’s First Reading EPR</th>
<th>Difference EPR/DB</th>
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<td>CA(2)</td>
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<td>1. Sustainable Growth</td>
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<td>1a. Competitiveness for Growth and Employment</td>
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<td>3. Citizenship, Freedom, Security and Justice</td>
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**Notes**

1. Appropriations for payment as % of GNI

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<thead>
<tr>
<th>Heading</th>
<th>Financial Framework Ceiling</th>
<th>2008 PDB</th>
<th>2008 DB Council First Reading</th>
<th>EP’s First Reading EPR</th>
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14. The margin for Heading 1 (sub-heading 1a) does not take into account the appropriations related to the European Globalisation Adjustment Fund (€500 million).

15. Excludes €234.5 million from the Emergency Aid Reserve.
### Table 2
##### Summary of 2008 PDB, Draft EC Budget and EP First Reading—GBP Million

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<th>Financial Framework Ceiling</th>
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<th>EP’s For 1st Reading</th>
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<td>1. Sustainable Growth</td>
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<td>1b. Cohesion for Growth and Employment</td>
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<td>2. Preservation and Management of Natural Resources</td>
<td>39,631.2</td>
<td>37,910.0</td>
<td>36,915.0</td>
<td>37,557.3</td>
<td>36,542.3</td>
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<td>1,701.3</td>
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<tr>
<td>3. Citizenship, Freedom, Security and Justice</td>
<td>918.0</td>
<td>868.7</td>
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<td>856.7</td>
<td>760.3</td>
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<tr>
<td>3a. Freedom, Security and Justice</td>
<td>503.5</td>
<td>465.7</td>
<td>334.3</td>
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| Appropriations for payment as % of GNI | 0.97% | 0.95% | 0.99% |

**Notes**

(2) CA = commitment appropriations  
(3) PA = payment appropriations  
(4) Due to rounding, the sum of the lines may not equal the total  
(16) The margin for Heading 1 (sub-heading 1a) does not take into account the appropriations related to the European Globalisation Adjustment Fund (£337 million).  
(17) Excludes £158.1 million from the Emergency Aid Reserve.
Letter from Kitty Ussher MP to the Chairman

On 23 November 2007, I represented the UK at the Budget Economic and Financial Affairs Council (ECOFIN). I am pleased to update you on the progress made at Budget ECOFIN at which the Council of the European Union formally agreed its second reading of the 2008 Draft Budget (DB) of the European Communities following conciliation with the European Parliament. The amended DB was agreed by Council by qualified majority with all Member States voting in favour apart from Germany and Spain, who voted against and abstained respectively.

Council’s agreed position ahead of conciliation was based on a package put together by the Portuguese Presidency (and supported by the UK) following discussions in Council Budget Committee. The Presidency package proposed overall reductions to both commitment and payment appropriations beyond Council’s first reading of €485.68 million and €748.63 million respectively. The package proposed total commitment appropriations of €127.92 billion leaving a margin of €4.38 billion, and total payment appropriations of €118.66 billion, representing 0.94% of EU GNI, below the 0.97% EU GNI of the Commission’s Preliminary Draft Budget (PDB) and the 0.95% EU GNI of Council’s first reading. The package in large part reverted back to Council’s first reading position, apart from:

- accepting both Amending Letters 1 and 2 which provide for additional appropriations for Kosovo and Palestine, and reductions to agriculture expenditure (for which more detail was provided in my last update letter of 20 November);
- accepting the European Parliament’s first reading amendments—proposed increases for the FRONTEX agency (management of operational co-operation at external borders), and for the administration budgets of the European Parliament and the European Economic and Social Committee; and
- the increase for the CFSP budget of €85 million in commitment appropriations and €40 million in payment appropriations.

Tables summarising the changes between the PDB, Draft Budget, the EP’s first reading amendments and the Presidency second reading package are set out in Annex 1 to this letter.

Agreement Reached between Council and European Parliament

Before proceeding with the second reading of the DB, the Council held its customary conciliation meeting with a delegation from the European Parliament. During the course of the Council’s conciliation with the European Parliament, it became apparent that no agreement would be reached on the 2008 EC Budget without also reaching agreement on the multi-annual financing of the Galileo project and the European Institute of Technology (EIT). (I refer you to the letter I wrote to both scrutiny committees on this subject dated 28 November.)

After lengthy negotiation, the European Parliament, the Council and the Commission reached broad agreement on several key elements of the 2008 EC Budget:

- Total payment appropriations were set at €120.35 billion, corresponding to approximately 0.96% EU GNI, below the level originally proposed by the Commission in its Preliminary Draft Budget (PDB). This incorporated the payment appropriations in 2008 for the Galileo project and a reduction of €300 million in appropriations regarding clearance of agricultural guarantee fund accounts;
- Acceptance of Amending Letter 2 (reductions to agriculture expenditure) as proposed by the Commission;
- Political agreement was reached on the Commission’s proposal to amend the Inter-institutional Agreement (IIA) of 17 May 2006 on budgetary discipline and sound financial management and regarding the multi-annual financial framework, with a view to financing the Galileo project and the EIT; and so—
- in order to finance Galileo and the EIT, agreement was also reached on a smaller revision of the Financial Perspective to that originally proposed by the Commission, whereby €1.6 billion would be reallocated from the 2007 margin of Heading 2 (Preservation and Management of Natural Resources), €600 million would be reprioritised within Heading 1a (Competitiveness for Growth and

18 For Sterling equivalents of key figures quoted, please refer to the tables in Annex 1.
19 Apart from the budget line relating to the clearance of accounts with regard to shared management expenditure under the EAGGF (European Agricultural Guidance and Guarantee Fund) and the EAGF (European Agricultural Guarantee Fund), which is reduced by €200 million beyond Council’s first reading.
20 This represented a further €100 million reduction on top of that proposed in the Council second reading package.
Employment) across 2008–13, €300 million would be made available from the 2008–13 margins of Heading 1a, and €200 million would be mobilised from use of the Flexibility Instrument; and

— The amount of the CFSP budget for 2008 was set at €285.25 million in commitment appropriations for which purpose it was agreed to mobilise the Flexibility Instrument for an amount of €70 million to provide sufficient financing for the CFSP mission in Kosovo.

In addition to agreement on these elements of the 2008 EC Budget, four Joint Statements were agreed at Budget ECOFIN. These concerned: the financing of Galileo and the EIT; Joint Undertakings; and the procedure to implement the budget agreement reached by the Council and European Parliament. The Government is supportive of these statements, which affirm the principle of fair and open competition and call for sound financial management and budget discipline in the areas they concern. My letter to you of 28 November provides further detail on the important commitments secured with respect to the financing of Galileo and open and competitive procurement for the project.

UK Approach and the Next Stage of the EC Budget Procedure

In line with the approach and objectives I have outlined previously, I believe the UK achieved the best possible outcome from this stage of the EC Budget negotiations. The UK, working with other Member States, and in particular the Netherlands and Sweden, was instrumental in negotiating a budget deal that sets overall payment levels for 2008 below those of the PDB and well below 1% of EU GNI, that limits the extent of Financial Perspective revision to finance Galileo and the EIT, and that protects spending allocations for Afghanistan, Palestine, Kosovo and Iraq and other UK priority areas (Adjustment Support for Sugar Protocol Countries, Co-operation with Developing Countries in Asia, Humanitarian Aid and CFSP).

The consensus reached at Budget ECOFIN has set the parameters for commitment and payment appropriations for the budget headings. Council has now concluded its second reading of the 2008 EC Budget and compulsory expenditure (mainly spending on agriculture) has been settled. The European Parliament will formally agree the non-compulsory expenditure part of 2008 EC Budget in its second reading culminating in the plenary session on 13 December. This will mark the formal adoption of the 2008 EC Budget and I will keep you informed of the final outcomes.

12 December 2007

21 The Flexibility Instrument permits up to €200 million to be budgeted above the ceilings of the Financial Perspective and these funds may be carried over for up to two years.
### Table 1

**SUMMARY OF 2008 PDB, DRAFT EC BUDGET, EP FIRST READING AND COUNCIL SECOND READING PACKAGE—EUR MILLION**

<table>
<thead>
<tr>
<th>Heading</th>
<th>Financial Framework Ceiling</th>
<th>2008 PDB</th>
<th>Council First Reading</th>
<th>EP’s First Reading</th>
<th>Council Second Reading Package</th>
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<td>PA</td>
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**Appropriations for payment as % of GNI**

<table>
<thead>
<tr>
<th></th>
<th>2008 PDB</th>
<th>Council First Reading</th>
<th>EP’s First Reading</th>
<th>Council Second Reading Package</th>
</tr>
</thead>
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<td></td>
<td>CA</td>
<td>PA</td>
<td>CA</td>
<td>PA</td>
</tr>
<tr>
<td>0.97%</td>
<td>0.95%</td>
<td>0.99%</td>
<td>0.94%</td>
<td></td>
</tr>
</tbody>
</table>

**Notes**

(2) CA = commitment appropriations
(3) PA = payment appropriations
(4) Due to rounding, the sum of the lines may not equal the total

---

22 The margin for Heading 1 (sub-heading 1a) does not take into account the appropriations related to the European Globalisation Adjustment Fund (€500 million).
23 The margin for Heading 4 does not take into account €239.2 million from the Emergency Aid Reserve.
**Table 2**

**Summary of 2008 PDB, Draft EC Budget, EP First Reading and Council Second Reading Package—GBP Million**

<table>
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<tr>
<th>Heading</th>
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<th>EP's First Reading</th>
<th>Council Second Reading</th>
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<td>2. Preservation and Management of Natural Resources</td>
<td>39,631.2</td>
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<td>1,701.3</td>
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<td>3a. Freedom, Security and Justice</td>
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<tr>
<td>3b. Citizenship</td>
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<td>403.1</td>
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<tr>
<td>4. European Union as a Global Partner</td>
<td>4,719.3</td>
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<td>222.3</td>
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<td>4,944.5</td>
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<tr>
<td>6. Compensation</td>
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<td>TOTAL(4)</td>
<td>88,622.2</td>
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<td>2,114.3</td>
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<td>2,629.9</td>
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</table>

**Notes**

(2) CA = commitment appropriations  
(3) PA = payment appropriations  
(4) Due to rounding, the sum of the lines may not equal the total  

Sterling figures converted at the exchange rate on 29 June 2007: €1 = £0.674

**Notes**

(24) The margin for Heading 1 (sub-heading 1a) does not take into account the appropriations related to the European Globalisation Adjustment Fund (£337 million).  
(25) The margin for Heading 4 does not take into account £161.2 million from the Emergency Aid Reserve.
Letter from Angela Eagle MP to the Chairman

Following on from the Economic Secretary’s letter to you of 12 December, I am pleased to update you on the outcome of the European Parliament’s second reading of the 2008 EC Budget and its formal adoption which took place in the plenary session of 13 December. This marks the end of the 2008 budget procedure.

The final budget totals are those agreed between the Council and European Parliament (EP) during conciliation at Budget ECOFIN on 23 November. As you may recall, commitment appropriations were set at €129.1526 billion and payment appropriations at €120.35 billion—corresponding to approximately 0.96% EU GNI, below the level originally proposed by the Commission in its Preliminary Draft Budget (PDB) and significantly below the level put forward in the EP’s first reading.

The European Parliament’s Amendments

While the agreement of 23 November set the overall totals for commitment and payment appropriations, and the Council determined the final level of expenditure for compulsory expenditure (mainly agriculture), the EP, at its plenary session on 13 December, had the final say on setting appropriations for non-compulsory expenditure.

**Under Heading 1a (Competitiveness for growth and employment)**, the EP set commitment appropriations at €11.086 billion, €1.08 billion higher than Council’s second reading, leaving no margin under the FP ceiling for commitments. A further €200 million above the ceiling (for Galileo) is to be financed by the mobilisation of the Flexibility Instrument. Payments were set at €9.773 billion, €782 million higher than Council’s second reading, though some €220 million lower than the EP’s first reading.

In comparison to 2007 payment appropriation levels, the sub-heading as a whole receives an increase of 49.3% or €3.228 billion. Within this there are significant increases to the following budget areas:

- Seventh Research framework programme—increased payments by €2.402 billion or 63.4%;
- Transport and Energy Networks (Tens)—increased payments by €333.8 million or 88.1%;
- Galileo—payments of €300 million to reflect the €790 million (790%) increase in commitment appropriations resulting from the additional financing and revision of the FP agreed by the Budgetary Authority; and
- Competitiveness and innovation framework programme—increased payments by €1.165.7 million or 57.2%.

There are also decreases on 2007 payment appropriation levels for:

- Customs 2013 and Fiscalis 2013 by €8.247 million or 13.4%;
- Other actions and programmes by €261.2 million or 38.5%.

**Under Heading 1b (Cohesion for growth and employment)**, the EP set commitment appropriations at €46.878 billion, at the same level of Council’s second reading, leaving no margin under the FP ceiling for commitments. Payments were set at €40.552 billion, €426.9 million higher than Council’s second reading, though some €220 million lower than the EP’s first reading.

In comparison to 2007 payment appropriation levels, the sub-heading as a whole receives an increase of 9.5% or €3.506 billion. Within this there are significant increases to the following budget areas:

- Structural Funds—increased payments by €1.058 billion or 3.2% (within which the Convergence objective is to have payments increased by €2.056 billion or 9.3%, while the Regional competitiveness and employment objective is to have payments decreased by €1.170 or 12.6%);
- Cohesion Fund—increased payments by €2.452 billion or 57.4%.

**Under Heading 2 (Preservation and management of natural resources)**, the Council and EP set commitment appropriations at €55.041 billion, €38.8 million higher than Council’s second reading, leaving a margin of €3.759 billion under the FP ceiling for commitments. Payments were set at €53.177 billion, €41.3 million higher than Council’s second reading, though some €1.7 billion lower than the EP’s first reading.

In comparison to 2007 payment appropriation levels, the heading as a whole receives a decrease of 1.9% or €1.033 billion. Within this there are significant decreases to the following budget areas:

- Market related expenditure on direct aids—decreased payments by €1.210 billion or 2.9% (within which Agriculture markets is to have payments decreased by €1.401 billion or 3.3% and Animal and plant health is to have payments increased by €190.35 million or 539.2%);
- European Fisheries Fund—decreased payments by £368.0 million or 44.9%.

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For Sterling equivalents of key figures quoted, please refer to the tables in Annex 1.
There are also increases on 2007 payment appropriation levels for:

- Rural development of £485.3 million or 4.5%;
- Life + (Environment) of £37.1 million or 31.3%.

Under Heading 3a (Freedom, security and justice), the EP set commitment appropriations at €728.0 million, €103.3 million higher than Council’s second reading, leaving a margin of €18.97 million under the FP ceiling for commitments. Payments were set at €533.2 million, €24.0 million higher than Council’s second reading and at the same level as the EP’s first reading.

In comparison to 2007 payment appropriation levels, the sub-heading as a whole receives an increase of 44.2% or €163.3 million. Within this there are significant increases to the following budget areas:

- Solidarity and management of migration flows—increased payments of €108.4 million or 77.9%;
- Fundamental rights and justice—increased payments by €368.0 million or 75.4%;
- Decentralised agencies—increased payments by €38.3 million or 44.1%.

Under Heading 3b (Citizenship), the EP set commitment appropriations at €614.8 million, €30.9 million higher than Council’s second reading, leaving a margin of £0.157 million under the FP ceiling for commitments. Payments were set at £708.3 million, £58.4 million higher than Council’s second reading and at the same level as the EP’s first reading.

In comparison to 2007 payment appropriation levels, the sub-heading as a whole receives a decrease of 21.3% or €192.0 million (although this does not account for future mobilisation of the EU Solidarity Fund under this sub-heading, which should result in an overall increase in payments). Within this there are significant increases to the following budget areas:

- Culture 2007–2013—increased payments by €13.0 million or 31.2%;
- Decentralised agencies—increased payments by €19.1 million or 22.9%.

There is also a decrease on 2007 payment appropriation levels for:

- Other actions and programmes (relating to Enlargement) of €35.2 million or 26.1%.

Under Heading 4 (The EU as a global partner), the EP set commitment appropriations at €7.311 billion, €95.2 million higher than Council’s second reading, leaving no margin under the FP ceiling for commitments. A further €70 million above the ceiling (for the CFSP mission in Kosovo) is to be financed by the mobilisation of the Flexibility Instrument. Payments were set at €8.113 billion, €375.2 million higher than Council’s second reading, though some €20 million lower than the EP’s first reading.

In comparison to 2007 commitment and payment appropriation levels, the heading as a whole receives increases of 7.3% or €498.8 million and 10.3% or €760.0 million respectively. Within this there are significant increases to the following budget areas:

- Instrument for Pre-Accession—increased commitments by €177.1 million or 14%;
- European Neighbourhood and Partnership Instrument—increased commitments by €144.7 million or 10.2%;
- Common Foreign and Security Policy (CFSP)—increased commitments by €126.1 million or 79.2%;
- Development Co-operation Instrument—increased commitments by €71.4 million or 3.3%;
- Instrument for Stability—increased commitments by €40.0 million or 28.7%.

Under Heading 5 (Administration), the EP set commitment and payment appropriations at €7.284 billion, €76.9 million higher than Council’s second reading, marginally lower than the EP’s first reading. This leaves a margin of €173.14 million under the FP ceiling for commitments.

In comparison to 2007 payment appropriation levels, the heading as a whole receives an increase of 4.4% or €306.0 million—significantly lower than the 5.7% increase proposed by the Commission in its Preliminary Draft Budget.

The EP made no amendments to Heading 6 (Compensations) and appropriations remain at €206.6 million for both commitment and payment appropriations, unchanged through each stage of the budget negotiations.

THE UK’S OBJECTIVES AND THE ADOPTED BUDGET

The formal adoption of the budget marks the end of the negotiations for the 2008 budget. The outcome of the EP’s second reading finalising the 2008 EC Budget reflects the agreement reached between Council and the EP at Budget ECOFIN in November, and as the Economic Secretary’s letter to you of 12 December set out, the UK achieved the best possible outcome given the circumstances. In respect of the Government’s objective to
contain budget growth, a budget deal was reached which set overall payments at under 1% EU GNI and below the level proposed in the Commission’s PDB. Budget growth was also contained under Headings 2 (agricultural expenditure) and 5 (administration), where the adopted budget contains payment levels below those proposed in the PDB. In respect of maintaining budget discipline, the agreement reached by the Budgetary Authority limited the extent of Financial Perspective revision required to finance Galileo and the European Institute of Technology. Joint Declarations issued at Budget ECOFIN also emphasised the exceptional nature of this revision.

The adopted budget also meets the Government’s objectives on external actions where the UK sought to ensure sufficient resources were allocated for Afghanistan, Palestine, Kosovo and Iraq, co-operation with developing countries in Asia, and spending on the CFSP and Adjustment Support for Sugar Protocol Countries. In particular, the adopted budget allocates appropriations above those proposed in the PDB for:

— Palestine—allocated commitments of €300 million, €142 million above the Commission’s original proposal;
— Iraq (within Co-operation with developing Middle Eastern countries)—allocated commitments of €98.4 million (as proposed in the PDB) and payments of €80 million, €18 million above the Commission’s original proposal;
— Co-operation with developing countries in Asia—allocated commitments of €666 million, €24 million above the Commission’s original proposal;
— CFSP—allocated commitments of €284.9 million, €85 million above the Commission’s original proposal; and
— Adjustment Support for Sugar Protocol Countries—allocated commitments of €152.6 million, €3 million above the Commission’s original proposal.

Tables summarising the changes between the PDB, Draft Budget, the EP’s first reading amendments, Council’s second reading and the final adopted budget are set out in Annex 1 to this letter.

I hope this information is helpful to the Committee.

31 January 2008
### Table 1

**Summary of 2008 PDB, Draft EC Budget, EP First Reading, Council Second Reading, and Adopted Budget—EUR Million**

<table>
<thead>
<tr>
<th>Heading</th>
<th>Financial Framework Ceiling</th>
<th>2008 PDB</th>
<th>Council First Reading</th>
<th>EP’s First Reading</th>
<th>Council Second Reading</th>
<th>Adopted Budget</th>
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<td>PA</td>
<td>CA</td>
<td>PA</td>
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<td>3,902</td>
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</table>

| Appropriations for payment as % of GNI | 0.97% | 0.95% | 0.99% | 0.99% | 0.94% | 0.96% |

**Notes**

(2) CA = commitment appropriations

(3) PA = payment appropriations

(4) Due to rounding, the sum of the lines may not equal the total

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(27) The margin for Heading 1 (sub-heading 1a) does not take into account the appropriations related to the European Globalisation Adjustment Fund (€500 million).

(28) The margin for Heading 4 does not take into account €239.2 million from the Emergency Aid Reserve.
### Table 2
**Summary of 2008 PDB, Draft EC Budget, EP First Reading, Council Second Reading, and Adopted Budget—GBP Million**

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<td>33,103.5</td>
<td>38,338.5</td>
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<td>3. Citizenship, Freedom, Security and Justice</td>
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<td>5. Administration</td>
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<td>6. Compensation</td>
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<td>139.5</td>
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<td>81,945.6</td>
<td>86,542.3</td>
<td>80,482.3</td>
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<td>1,762.5</td>
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<td>2,957.5</td>
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</tbody>
</table>

For payment as % of GNI

| Appropriations for payment as % of GNI | 0.97% | 0.95% | 0.99% | 0.94% | 0.96% |

### Notes
(2) CA = commitment appropriations
(3) PA = payment appropriations
(4) Due to rounding, the sum of the lines may not equal the total

Sterling figures converted at the exchange rate on 29 June 2007: £1 = £0.674

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The margin for Heading 1 (sub-heading 1a) does not take into account the appropriations related to the European Globalisation Adjustment Fund (£337 million).

The margin for Heading 4 does not take into account £161.2 million from the Emergency Aid Reserve.
PROTECTION OF THE EURO AGAINST COUNTERFEITING (13468/07)

Letter from the Chairman to the Rt Hon Jane Kennedy MP, Financial Secretary, HM Treasury

Thank you for your Explanatory Memorandum 13468/07 dated 1 April 2008. This was considered by Sub-Committee A at their meeting on 29 April. The Sub-Committee broadly supports the Government’s approach and decided to hold the document under scrutiny pending the discussions in the anti-fraud working group and the Economic and Finance Committee. The Sub-Committee would be grateful for details on the progress of negotiations, particularly on the ECB’s suggestion that the proposal be split into two parts.

29 April 2008

VAT FRAUD (6859/08)

Letter from Rt Hon Jane Kennedy MP, Financial Secretary, HM Treasury, to the Chairman

The European Commission have recently issued a Communication and Staff Working Paper on measures to change the VAT system to fight fraud. I have today sent an Explanatory Memorandum to the Scrutiny Committees on these documents and knowing your interest in the issue of Missing Trader Intra Community VAT fraud, I felt that it would be helpful to provide you with an update on the latest position.

The outlook is far better than it was at the time that you were conducting your enquiry in 2007. According to the latest estimates of VAT fraud produced by HMRC, estimated attempted fraud fell in 2006–07 from £3.5 billion—£4.75 billion to £2.25 billion—£3.25 billion. The impact on VAT receipts shows a drop from £2 billion—£3 billion to £1 billion—£2 billion. Trade statistics based on data collected and provided by HMRC, indicate that the reduction in attempted fraud has continued and has been sustained through 2007–08. Estimates of the impact of MTIC on the balance of payments in recent months put it at less than £100 million per month, down from the peak of £4.8 billion in March 2006.

The indications are that, through a combination of operational measures and the introduction of the targeted Reverse Charge, the UK has succeeded in significantly reducing MTIC VAT fraud. In addition, our emerging initial assessment of the targeted Reverse Charge shows no indication of a migration of MTIC trade to other Member States. Within the UK, although there have been some attempts at using commodities other than mobile telephones and computer chips (CPUs), fraudsters have found it difficult to move to other goods which have the same demand, size and cost profile. To date, HMRC are not aware of widespread mutation and have been able to take effective action in the cases that they have found. HMRC, however, remain alert to the possibility of new or variant frauds and are carefully monitoring the situation.

I would, of course, be happy to respond to any further questions that you might have arising from either this short update or the EM that it accompanies.

1 March 2008

Letter from the Chairman to the Rt Hon Jane Kennedy MP

Thank you for your Explanatory Memorandum 6859/08 and your letter dated 1 March. Both items were considered by Sub-Committee A on 1 April. The Sub-Committee cleared the Memorandum from scrutiny. The Sub-Committee have asked me to thank you for the additional information that you provided in the letter. The Sub-Committee remain concerned about the size of the impact on the balance of payments and hope that this will continue to fall. The Members of the Sub-Committee would therefore be grateful if you were able to provide further updates as more data becomes available.

2 April 2008

VAT SIMPLIFICATION (14248/04)

Letter from Rt Hon Jane Kennedy MP, Financial Secretary, HM Treasury, to the Chairman

The previous Financial Secretary wrote to you on 10 May 2007 to provide you with an update on progress on this particular legislative package, which was due to return to ECOFIN in June.

As expected, the German Presidency did push for agreement to the proposed Directive to reform the existing cross-border refund procedure as part of an overall VAT discussion at the June ECOFIN. The other VAT proposals that featured were the proposed changes to the rules on the place of supply of services (EM 5051/04 and 11439/05). Although the Committee cleared those proposals last year, they have yet to be agreed in ECOFIN. Finally, the discussion also covered the possible implementation date for these changes (the...
ECONOMIC AND FINANCIAL AFFAIRS, AND INTERNATIONAL TRADE (SUB-COMMITTEE A) 33

Presidency suggestion was 1 January 2010) and the need for some form of appropriate simplification mechanism before the completion of work on the proposed electronic One Stop Scheme.

As highlighted last time, for non-EU businesses Directive 2002/38/EC was extended in November last year (EM 15428/06) and that extension is due to expire on 31 December 2008. The Presidency suggestion was that those arrangements should be extended again, and that they should be made available to EU as well as non-EU businesses, until the electronic One Stop Scheme is available (currently assumed to be from 1 January 2013).

All this was essentially agreed at ECOFIN in June, subject to some technical work, which is being taken forward by the Portuguese Presidency. One work strand involves the proposed changes to the place of supply of services for B2C supplies for telecom, broadcasting, electronic and maritime services. The other is about control and administrative cooperation arrangements. These issues are due to return to ECOFIN before the end of the year. Assuming Member States are able to agree, the proposed changes would then be formally adopted by Council.

The other two elements, the proposed Directive to introduce a range of simplification measures (including the proposal to give Member States more flexibility in setting National Thresholds) and the proposed Regulation, remain outstanding. There has been no further discussion on these elements so far under the Portuguese Presidency.

I hope you find this information helpful.

7 November 2007

Letter from the Rt Hon Jane Kennedy MP to the Chairman

I wrote to you on 7 November 2007 to provide you with an update on progress on this particular legislative package.

As expected, the proposed Directive to reform the existing cross-border refund procedure was agreed at ECOFIN at the end of last year and was adopted at ECOFIN on 12 February 2008, together with the other VAT proposals on place of supply of services (EM 5051/04 and 11439/05).

The two other elements of this particular legislative package, the proposed Directive to introduce a range of simplification measures (including the proposal to give Member States more flexibility in setting National Thresholds) and the proposed Regulation to support those measures, remain outstanding. There was no discussion on those elements under the Portuguese Presidency and I will update you if there is any progress under the Slovenian Presidency.

I hope you find this information helpful.

28 February 2008

WORLD TRADE ORGANISATION: ACCESSION OF REPUBLIC OF CAPE VERDE (16262/07)

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

This letter accompanies an Explanatory Memorandum (16262/07) concerning a Council Decision establishing the Community position within the General Council of the World Trade Organisation on the accession of the Republic of Cape Verde to the World Trade Organisation. The reason for writing to you is to explain why it has been necessary to lift the UK’s parliamentary scrutiny reserve in the Council.

On 7 December Member States were told by the European Commission at the Article 133 Committee that the WTO Accession Working Party report had been adopted in Geneva and that this would enable the WTO General Council to vote on Cape Verde’s accession on 18 December. This means that the EU must conclude its arrangements for agreeing to the accession of Cape Verde to the WTO before the General Council. As this issue had not been scrutinised by your committee, the UK entered a parliamentary scrutiny reserve on 7 December.

On 6 December the Commission circulated its written proposal for a Council Decision to establish the Community position on Cape Verde’s WTO accession. However, the Council Legal Services and Member States considered the legal basis of the Commission’s proposal to be inadequate. The issue was that the Commission considered that it had sole competence to conclude WTO negotiations whereas Council Legal Services and Member States considered that aspects of Cape Verde’s WTO accession protocol, including reciprocal market access conditions, were matters where Member States shared competence and were not entirely of Community competence, requiring additional legal bases to be cited. The Council Secretariat
therefore replaced the text of the Commission proposal with another text extending the legal base. Member States were requested to clear the amended Council Decision by written procedure by 14 December, and all Member States have now confirmed their agreement.

The revised Council Secretariat text was not circulated until 12 December. This presented my Department with an extremely tight timetable and it was not therefore possible to follow normal parliamentary scrutiny procedures and an Explanatory Memorandum could not be submitted to enable your Committee to consider it before parliamentary recess. If the UK had maintained its scrutiny reservation, the EU would not have been able to express a position at the General Council, and consequently Cape Verde’s accession to the WTO would have been delayed. In my view this was not in the UK’s or the EU’s interests. I hope, therefore, you can accept my explanation and apologies for having to agree to override UK parliamentary scrutiny procedures on this occasion.

We have kept the Clerks of the Committees informed. On Friday 7 December my department advised both David Griffiths and Andrew Makower of receipt by BERR the day before of a Commission proposal for a Council Decision and explained the timing difficulties we faced. David Griffiths and Andrew Makower were further updated on 12 December just before we received the Council Secretariat amendments.

17 December 2007

WORLD TRADE ORGANISATION: ACCESSION OF UKRAINE

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

I am writing to give you advance warning of the possibility that the Government will want to override parliamentary scrutiny of an anticipated Commission proposal for a Council Decision establishing the Community position within the WTO General Council of the World Trade Organisation on the accession of Ukraine to the WTO.

I heard on Friday that on the evening of 16 January, Commissioner Mandelson and Ukrainian Deputy Prime Minister Nemyria reached agreement on the sole outstanding issue of export subsidies, which had been preventing the WTO General Council approving the accession of Ukraine to the WTO. The timings in Geneva are likely to be very tight. We anticipate a final meeting of the Ukraine WTO Accession Working Party to take place on 25 January. This should then enable the European Commission to produce a proposal for a Council Decision establishing the Community position on the accession of Ukraine in the WTO General Council. It is highly likely that Ukraine’s WTO accession will be considered at the next General Council meeting on 5 February.

The UK has been working hard behind the scenes to bring the Commission and Ukraine positions closer together. It would therefore be extremely regrettable for the UK to have to delay the accession process due to parliamentary scrutiny. I shall, of course, submit an Explanatory Memorandum as soon as possible for your Committee’s consideration. In the meantime I hope that you will accept my explanation.

21 January 2008
Internal Market (Sub-Committee B)

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

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

My BERR colleague, Stephen Timms, wrote to you on 4 October 2007¹ to inform you of the outcome of discussions on postal liberalisation at the 1 October Telecoms Council in Luxembourg, at which I represented the UK.

I am pleased to say that the Council has now adopted a first reading Common Position with a view to the adoption of a Directive for the full accomplishment of the internal market of Community postal services.

This was followed on 9 November by a Communication from the Commission to the European Parliament in support of the Common Position adopted by the Council. Copies of both documents are enclosed with this letter.

Progress on this dossier is to be welcomed, as the current text not only sets firm dates for the accomplishment of a single European market in postal services, but also ensures a level regulatory playing-field which will enable the development of competition for the benefit of consumers.

The European Parliament’s Transport Committee, which has lead responsibility on postal issues, considered the text on 20 November and there is no evidence from the debate of substantive opposition to the key issues of commitment to market liberalisation, and development of a competitive market.

A second reading plenary is due for the end of January 2008, and there are grounds for optimism in anticipating adoption of the text without substantive amendment.

I shall write to you again in the New Year to report on progress.

27 November 2007

AIR SERVICES AGREEMENT WITH JORDAN

Letter from Jim Fitzpatrick MP, Parliamentary Under Secretary of State, Department for Transport, to the Chairman

I am writing to inform your Committee that the Transport Council on 30 November agreed to grant a mandate to the European Commission to negotiate a comprehensive aviation agreement between the European Community and its Member States on the one hand and the Kingdom of Jordan the other hand.

The mandate envisages the negotiation of a so-called “Euro-Mediterranean Aviation Agreement” along the lines of the one already agreed with Morocco. It calls for the opening up of markets between the EU and Jordan in return for which Jordan would agree to adopt harmonised and equivalent regulatory standards based on EU legislation. The areas to be covered include safety, security, competition, state aids, environmental measures, air traffic management, rights of investment and technical assistance.

A phased agreement is envisaged, with access to the EU market dependent on satisfactory progress by Jordan in implementing Community standards, notably on safety and security. The Commission will be assisted in the negotiations by a Special Committee of representatives from the member states. Once concluded, the agreement would replace existing bilateral air services agreements between individual EU Member States and Jordan.

It is understood that the Kingdom of Jordan is receptive to an agreement of this type, and negotiations can be expected to begin early in 2008.

14 December 2007

AIR TRANSPORT SERVICES: OPERATION IN THE COMMUNITY (11829/06)

Letter from Jim Fitzpatrick 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 since my letter of 23 July. At that point, it was expected that a political agreement would be reached on the proposal at the Transport Council on 2 October. In the event the proposal was not included on the Council agenda, and the Portuguese Presidency now hopes that political agreement will be possible at the Transport Council on 29/30 November.

My previous letter explained that an amendment had been put forward that would require an airline to apply to its employees the social legislation of the Member State in which the employees are based, and that, due to the argument put by the UK and number of other Member States that such legislation was not appropriate in this Regulation, a recital was proposed which simply says that Member States should ensure the proper application of Community and national legislation. This recital is merely a statement of the current position. However, the Council is still awaiting the outcome of a study launched by the Commission to investigate the effects of the internal market in aviation on employment and working conditions before considering whether any further, separate legislation is necessary. The study is expected to report at the end of the year, and I will keep your Committee informed of the outcome.

A second outstanding issue that I mentioned related to Public Service Obligations (PSOs). I reported that the Scottish Executive had favoured a de minimis exemption from the notification procedure for very thin routes of less than 10,000 passengers per annum. This amendment remains in the text of the draft proposal.

I reported that many of the EP’s First Reading amendments were welcome to the UK, as they have improved the original Commission proposal. This includes an EP amendment which would enable wet-leasing to continue on the basis of exceptional needs; seasonal capacity needs; or due to the unforeseen operational difficulties including technical problems, which remains in the latest draft text.

The unwelcome EP amendments requiring that a valid reciprocity agreement exists between a member state and the third country in order for leasing to take place are not included in the latest compromise text, although the approach remains an option for Member States.

As you may recall, the UK has strongly supported the principle that air fares should include all applicable and non-optional taxes, fees, charges and surcharges at all times, in order to allow consumers to compare prices and to make informed purchases. Although this principle is widely supported in the EP, my previous letter reported that a number of the Parliament’s amendments required a full breakdown of any taxes, fees and charges, including security costs. We thought that this level of detail was likely to confuse consumers and would be difficult to implement, and I am pleased to say that the latest text has been simplified accordingly.

As my previous letter set out, there were a number of other EP amendments relating to pricing and insurance that we did not support, and I am pleased to be able to report that these have been amended to our satisfaction. The proposed political agreement at the Transport Council on 29–30 November will not incorporate the EP amendments, except where they are in agreement with the position of the Council. No EP amendments that are unwelcome to the UK will be included.

In the last two months, the Presidency has been having informal discussions with the EP and the Commission on the issues where the EP’s opinion differed from the Council’s position. We are therefore hopeful that it will be possible to reach a second reading agreement on this proposal in due course. I will of course keep your Committee informed of the progress of the proposed Regulation.

20 November 2007

AIRPORTS (5886/07, 5887/07)

Letter from Jim Fitzpatrick MP, Parliamentary Under Secretary of State, Department for Transport to the Chairman

Sub-Committee B considered the Explanatory Memorandum on the above proposal on 5 March 2007 and responded that, whilst favouring action in the areas identified by the Commission, it shared the government’s concerns that the draft Directive may not target regulation effectively at monopoly power but instead add unnecessary regulation where competition already functions well. The Committee agreed that the proposed threshold at which airports should be regulated is arbitrary, and asked us to set out an alternative threshold which might better reflect airports’ market position. The Committee also indicated that it would like to receive the results of the Government’s consultation. I am writing to update the Committee on the progress of Council negotiations, especially on the scope of the Directive, and to inform it of the outcome of the consultation.
As you may recall from the Explanatory Memorandum, the Government indicated its support for the principles of the draft Directive but intended to consult with industry to further inform its policy considerations. The Department held a 12 week consultation which finished on 18 June 2007 and included a stakeholder seminar. 22 responses were received, including 10 from airports and 5 from airlines. The Civil Aviation Authority also responded. For a complete summary of responses, please refer to the attached document. I also attach a Partial Impact Assessment which takes account of the consultation results.

The responses to the consultation revealed considerable concerns about the proposed Directive. Over 80% of respondents thought that the Directive was not proportionate or well targeted at airports where there might be a case for regulation. Additionally, almost 80% thought that the threshold determining which airports would be covered by the Directive was unsuitable, with many suggesting alternative options. Airports, particularly those of small and medium size, opposed the proposals due to the likely increased costs involved, and argued that regulation is not appropriate in the competitive markets in which they operate. The CAA strongly opposed the Directive due to the increased regulatory burden it would impose and its inconsistency with existing UK policy. The response from airlines was more positive. One airline supported the Directive as drafted but agreed it would be open to amendments on its scope, whilst another agreed with the need for a Directive but considered the draft proposals too wide in scope and too weak in power, and thus ineffective.

On the basis of the consultation responses, the Government formulated a negotiating position which it has been pursuing in Council Working Group discussions, the first on 9 July 2007 and the most recent on 29 October. Our approach aims to reduce the burden on airports as far as possible, whilst helping airlines to operate in a competitive, yet fair, environment. As the Committee recognised in its response to our explanatory Memorandum, there are some problematic issues concerning the Directive, especially regarding the scope of its impact. Although the proposed 1 million passenger per year threshold has now been revised upwards to 5 million, with general agreement, the UK considers the fixed threshold approach in the draft Directive to be a arbitrary and too broad and would prefer to focus the Directive specifically at airports with market power. This position has been presented during Working Groups and the UK has proposed amendments to better target the provisions of the Directive to avoid adding unnecessary regulation to airports where sufficient competition exists. The UK’s preference for a market-share and competition-based test has not gained wide support from other Member States. We are therefore currently pursuing a new approach which we hope would mitigate the effects of the broad threshold in current drafts. This approach aims to recognise the UK’s existing system which targets regulation where it is needed. We have had some positive results in trying to ensure that the efficacy of our current system is acknowledged and hope that our proposed amendments will allow the UK to continue to apply its existing arrangements where they achieve the principle aims of the Directive.

Other areas of concern for the UK include the Directive’s provisions regarding the power of the Independent Regulatory Authority to intervene in disputes, the required frequency of consultation between airports and airport users and clauses requiring transparency during negotiations on charges. Whilst recognising the principles underpinning such proposals, we want to ensure that such measures are proportionate and do not undermine existing competition. We have therefore been contributing to Working Groups to try to make such provisions as balanced as possible in the interests of maintaining competitive yet constructive relations within the aviation industry. We have support from other Member States for some of these views and some of our proposed amendments have been added to the draft text. It is hoped that ongoing negotiations will allow us to make further progress in improving on the Commission’s initial proposal.

The Portuguese Presidency has iniated that it hopes it will be possible to reach a general approach on this dossier at Transport Council on 30 November. Working Group discussions of the proposal continue, with gradual progress, and I will write to you again ahead of the Council to provide you with an update on these negotiations. Some matters, however, may only be resolved during Ministerial discussions at the Council itself.

The European Parliament has begun its consideration of the draft text, the TRA Committee is currently scheduled to vote on the Rapporteur’s report on 21 November and the document is currently scheduled to have its plenary first reading in mid December. I will of course keep the Committee informed of the progress of the proposed Directive.

8 November 2007
European Draft Directive on Airport Charges—Summary of Responses to Consultation

Introduction

This document summarises the responses to the Government’s recent consultation on the European Draft Directive on Airport Charges. The consultation began on 26 March 2007 and closed on 18 June 2007. A stakeholder symposium was held on 26 April 2007 at DfT in London.

The Government received 22 responses to its consultation on the draft European Directive on Airport Charges. A list of respondents is included at Annex B.

The tables below show a breakdown of responses received by organisation and sector:

Table 1: Organisation Analysis

<table>
<thead>
<tr>
<th>Type of Organisation</th>
<th>Number of Respondents</th>
<th>Percentage Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small to Medium Enterprise (up to 50 employees)</td>
<td>1</td>
<td>4.5</td>
</tr>
<tr>
<td>Large Company</td>
<td>14</td>
<td>63.6</td>
</tr>
<tr>
<td>Representative Organisation</td>
<td>5</td>
<td>22.7</td>
</tr>
<tr>
<td>Trade Union</td>
<td>1</td>
<td>4.5</td>
</tr>
<tr>
<td>Interest Group</td>
<td></td>
<td>0.0</td>
</tr>
<tr>
<td>Local Government</td>
<td></td>
<td>0.0</td>
</tr>
<tr>
<td>Central Government</td>
<td></td>
<td>0.0</td>
</tr>
<tr>
<td>Member of the public</td>
<td></td>
<td>0.0</td>
</tr>
<tr>
<td>Other (inc Regulator)</td>
<td>1</td>
<td>4.5</td>
</tr>
<tr>
<td>Total</td>
<td>22</td>
<td></td>
</tr>
</tbody>
</table>

Table 2: Aviation Sector Analysis

<table>
<thead>
<tr>
<th>Type of Organisation</th>
<th>Number of Respondents</th>
<th>Percentage Respondents</th>
</tr>
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<tr>
<td>Airline/Airline Representative Organisation</td>
<td>5</td>
<td>29.4</td>
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<tr>
<td>Airport/Airport Representative Organisation</td>
<td>10</td>
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<td>Airport Consultative Committee</td>
<td>2</td>
<td>11.8</td>
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<tr>
<td>Total</td>
<td>17</td>
<td></td>
</tr>
</tbody>
</table>

Consultation Response Analysis

The following section analyses responses to each question posed in the consultation and gives Government’s response.

1.(a) Do you think that a passenger threshold is an effective way to establish which airports should fall within the scope of the Directive?

(b) If so, is the proposed 1 million passenger per annum (mppa) threshold appropriate?

2. Can you suggest any alternative ways to establish which airports in a Member State should be subject to the measures proposed in the Directive?

Four of the 20 respondents who responded to this question supported using a passenger threshold to determine the scope of the Directive, while one supported using 1 mppa as the threshold. Most respondents, including both airlines and airports, believed a passenger threshold was not a good way of targeting airports with market power, where they may be a rationale for regulation, and the 1 mppa would mean a disproportionately large number of UK airports would be subject to the Directive. A range of alternatives were suggested, all with the aim of targeting the Directive more effectively at airports where there may be a case for regulation. These included using a test to identify airports with substantial market power, basing a threshold on market share or some combination of these two.
Government Response

The Government agrees that a 1 mppa threshold is inappropriate to set the scope of the Directive. It supports the use of a 1% EU market share threshold to determine initially which airports should fall within the scope of the Directive. Additionally, the Government supports a market power test or “competition assessment” to be carried out by national regulators to determine which airports have substantial market power and should be brought into regulation, despite not falling within the 1% threshold, or which airports do not have market power, despite falling within the threshold, and should be excluded from regulation.

3. Do you agree with the requirement for a mandatory process of consultation between the airport management and airport users at all qualifying airports?

There was a variety of responses to this question. 35% of respondents, including 4 airlines, agreed that consultation should be mandatory at least when airports proposed to change the level or structure of their charges. Others supported the principle of mandatory consultation at airports with substantial market power. A significant number questioned whether mandatory consultation was necessary or appropriate at airports operating in competitive markets, where consultation between airlines and airports formed part of normal commercial relationships, with little case for making it a legal requirement.

Government Response

The Government’s view is that consultation should be required when there are significant changes to the system or level of charges, but not mandated to take place annually.

4. Do you think the proposed timescale for agreeing changes to charges would work in practice?

80% of respondents thought that a requirement to consult at least 4 months before revised charges were introduced and to publish agreed charges 2 months in advance did not allow sufficient time for consultation and for airlines to adapt. A longer period or allowing greater flexibility would be more appropriate. Two respondents thought the proposed timetable would be workable in practice.

Government Response

The Government’s preferred approach is that the Directive should not include a timetable for consultation on airport charges. Where consultation was appropriate, when there were significant changes to charges, the Directive should allow adequate time for consultation and discussion, taking into account airlines’ requirements.

5. Would you be content for the CAA to take on the role of Independent Regulatory Authority (RA) in the UK? If not, do you have any alternative suggestions?

84% of respondents were content for CAA to be the UK Independent Regulatory Authority as defined in the Directive. 2 were not. One argued for a separate ombudsman to be set up, another thought CAA as regulator should concentrate on ensuring markets operated competitively. Many of those who were content for CAA to take on this function raised concerns about the funding and resource implications given the wider and different role for an RA than that currently carried out by CAA.

Government Response

The Government agrees CAA would be the best organisation to be the UK Independent Regulatory Authority. Funding and resource implications for CAA will depend on the final scope of the Directive.

6. Do you think that arbitration by an IRA would be an effective method of resolving disagreements between airports and airlines for all or any of the Directive’s provisions?

7. How do you think this would work in practice if, for example, an airport proposed a charge of x and the airport users preferred x-5? Would the IRA need to follow a process similar to a price cap review?

8. Are you content that the IRA’s decisions in matter of arbitration would have binding effect?

Opinion was split almost equally on whether arbitration by the regulatory authority would be an effective method of resolving disputes. A number of respondents believed that there should be guidelines or criteria about how arbitration would operate and circumstances where the RA may intervene, including how to
safeguard against frivolous or vexatious complaints. Without these, there was a risk of the RA being drawn into disputes at an increasing number of airports, where it would effectively set airport charges. Some respondents thought the regulator would in practice be required to carry out price cap reviews at an increased number of airports. This would have significant cost implications and might risk undermining incentives to invest.

Respondents also thought that two months was too short for a regulator to reach a decision, particularly for complex issues. One respondent stressed the need for all regulatory decisions to be published to aid transparency.

14 respondents answered question 8 about whether the RA’s decisions should be binding. Of these almost half were content with binding decisions, in some cases provided Judicial Review could be sought to consider points of law.

Government Response
The Government does not believe the right to seek arbitration from the RA as drafted is appropriate, and supports the views of consultees who argue for a more tightly defined role for a regulator including criteria under which disputes could be assessed. The Government believes that appeals to a regulator should be on the basis of evidence of anti competitive behaviour by airports or airlines, in line with standard competition law.

9. Will the transparency requirements affect your normal commercial relationships?

10.(a) Do you believe that these transparency requirements are required at all airports with over 1 million passengers per annum?

(b) What costs and benefits would ensue?
Respondents had a variety of views about these questions.

Small and medium airports were concerned about the effects the transparency requirement would have on their relationships with airlines. Some argued that mandatory transparency requirements were not needed when airports operated in competitive market. Disclosing cost and revenue information could effect their commercial position. These airports were also concerned about the costs of establishing systems to provide the information required by the Directive—some estimated start up costs to be in the region of £100,000 per airport, with annual costs of tens of thousands. Large airports were in favour of transparency in principle but had concerns about the detail of the Directive, which assumed a close relationship between costs and charges when in reality this wasn’t always the case. Airlines were in favour of cost and revenue transparency from airports, although one was concerned about providing potentially confidential information to airport operators.

Government Response
The Government’s is concerned that the transparency requirements could undermine competition. We would suggest aligning them with established accounting standards.

11. How do the proposals compare with current arrangements at UK and other Member State airports?
Respondents noted that the UK operates a privatised aviation market driven by market pressure and competition legislation. There was support for the UK system but one airline noted that other Member State legislation was currently inadequate. One airport noted that transposition of the Directive into Member State law would result in differences in how the Directive was implemented across Europe.

Government Response
The Government notes respondents’ comments, particularly regarding transposition. Whilst encouraging a consistent approach across the EU, we also recognise the importance of tailoring any regulation to meet national and local circumstances.
12. (a) Do you think that compulsory service level agreements are needed to guarantee quality standards effectively?

(b) How should any trade-off between higher standards and the cost of quality improvements be taken into account?

There was little support from respondents (9 out of 17 answered negatively) for mandatory service level agreements (SLAs) at all airports within the Directive’s scope, although this was favoured by one airline. A number of respondents argued that this was not appropriate at airports that operated in competitive environments—in these circumstances airports and airlines had incentives to negotiate and agree service quality standards. There was however recognition of the useful role SLAs could play at airports currently subject to price cap regulation in the UK and the benefits of the process of constructive engagement on these issues between airports and airlines. SLAs could be appropriate at airports that had substantial market power or where an airport was acting anti-competitively. Other points raised were; airlines would have different views about desired service levels, making airport wide agreements difficult; to be most effective handling agents would also need to be involved; and airline and passenger views on service quality might differ.

Government Response

The Government considers that airports would be required to consult airlines on service quality although it would not be mandatory to reach formal agreement. We suggest that rather than there being recourse to the RA purely regarding disputes on service quality, the RA would look at service quality when adjudicating on any dispute on price.

13. Do you have any other ideas on how quality standards could be maintained between airports and airlines?

Respondents had several alternative ideas for how quality standards could be maintained. Two airports thought that competition was the best way to meet airline needs. Another airport considered that passenger needs should be taken into account since airports provide direct services to passengers as well as to airlines. Two respondents suggested a greater role for the Regulatory Authority—it could be asked to step in to protect user interests in the event an SLA could not be agreed or if there was evidence of anti-competitive behaviour. One airport thought that airports should be able to set standards and have the power to vary them in agreement with airlines.

Government Response

The Government thanks respondents for their suggestions.

14. (a) Do you agree that airports should be able to differentiate charges based on the quality of service offered?

(b) Will the proposals affect any charging policies you currently have?

15. In your view, will the provisions ensure that airlines get fair access to the terminals they want to use if demand for a particular facility exceeds its capacity?

95% of respondents agreed that airports should be able to differentiate charges based on service quality. Airports described the proposal as a welcome move and a logical principle. It was noted that differentiation of charges would be difficult to introduce at small single terminal airports and one airport highlighted that it would be important to allow several types of differentiating strategy, such as route incentivisation schemes. Airlines also agreed with the principle although no frills carriers thought the proposals did not go far enough whereas a full service carrier thought that any differentiation should be minimal. One stakeholder considered the non discrimination text not strictly necessary since non discrimination on the basis of nationality is already disallowed under the Treaty of Rome.

However, only 12% of consultees who answered question 15 believed that the provisions would ensure airlines got fair access to terminals if demand exceeded capacity. Three organisations thought that it was important to set objective and fair criteria for access, and one thought this would be a challenge for airports. It was considered that the proposals must take account of contracts as these should limit airlines’ propensity to switch to other services. Two smaller airports thought that the proposals would not result in fair access and would result in preferential treatment for some carriers.

Government Response

The Government supports the principles of non-discrimination and the ability to differentiate of charges.
16. We would be grateful to receive from airlines in writing any examples where they consider that they have been treated unfairly at Member State airports with respect to airport charges. Several examples of potential unfair treatment of airlines were provided to us. These included examples of biased security charges in favour of transfer passengers, same charges at different terminals despite different infrastructure arrangements and examples of inappropriate consultation and transparency arrangements in two Member States.

Government Response

The Government thanks consultees for this information.

17. Do you think it is reasonable for security charges to meet security costs exclusively?

All except one of the respondents who answered this question believed that it was reasonable for security charges to meet security costs. Several respondents thought that what constituted “security costs” needed to be defined. It was generally thought that it was sensible to ring-fence security costs as they could be separately identified from other charges, but that this practice should not be extended to other types of charges. One airline thought that Member States should meet security costs and that other airport users, such as retail outlets, should also pay a charge. Another airline wished to avoid foreign airlines subsidising other Member States’ security costs. Several respondents referred to other agencies involved in security at airports, such as police, suggesting again the importance of defining what are security costs for the purposes of this Directive.

Government Response

The Government agrees that, where a separate charge is levied for security costs, it is reasonable for security charges to meet security costs. It also agrees with stakeholders that a definition of security costs would be beneficial.

18. Do you think the Commission’s proposals to regulate airport charges are targeted at, and proportionate to, the problems it has identified?

6% of respondents thought that the Commission’s proposals were well targeted and proportionate to identified problems and 83% did not. 11% were unsure. One respondent fully supported the Directive.

Six respondents considered the Directive as drafted to be disproportionate. Two airports and one trade association in particular wondered whether the Commission had any evidence of problems at airports and asked how a Directive could be drafted without such evidence. Small airports commented that the Directive would place an unnecessary cost burden on them.

Several airlines considered that the Directive as drafted lacks teeth as it is too wide in scope but shallow in detail. One full service carrier considered that the basis of the Directive should be ICAO’s principles on airport charging.

Many respondents thought that the Directive was not well targeted, which is reflected in responses to Questions 1, 1a and 2.

Government Response

The Government believes that competition is preferable to regulation.

Indeed, the Government shares the European Commission’s policy goals, namely to ensure that the entire aviation supply chain is as competitive as possible, which we see as benefitting airports, airlines and, most importantly, passengers. Our overarching, negotiating objective is to ensure a good outcome for passengers through well targeted and proportionate regulation.

As such, the Government would like to see a Directive targeted at airports where problems exist by means of a market power test and a 1% EU market share threshold. The Government believes that a revised scope would make the Directive more effective.

19. Are there any other issues in connection with airport charges which you think need to be addressed within the scope of this Directive?

Consultees suggested the following as features that could be addressed within the scope of the Directive:

— Directive should address issue of airport charges levied directly on passengers eg, airport development charge at Newquay and Norwich;
— Inclusion of a provision on ICAO principles in the Directive;
— Single till should be a requirement;
— Amending of definition of airport charge to include “reasonable return on assets” rather than “recovering all or part of costs”;
— Airports must retain scope to design tariffs to include environmental incentives;
— The Directive should include provisions on airport costs effectiveness and efficiency. The aim of regulation is to simulate competitive market conditions in monopoly situations.

Government Response

The Government thanks consultees for the points they raised in this section and we are keen to consider some of the points as part of the negotiating process.

20. Do you have any other comments you wish to make?

Respondents had the following additional comments:
— Difficulties could arise with existing pricing arrangements/contracts. Would the Directive include grandfathering/transition arrangements?
— The proposals will result in increase in cost of flying for the passenger and affect the viability of many existing services;
— It is important that the Directive does not undermine the existing UK system of regulation.

Government Response

The Government recognises the importance of the points raised above and would wish to consider them as part of the negotiating process. We are particularly interested in transitional arrangements for existing contracts and ensuring that the Directive is consistent with the existing UK system of regulation.

Annex A—List of Respondents

Air Transport Users Council
Airport Operators Association
BA
BAA
Board of Airline Representatives (BAR) UK
Birmingham Airport
bmi
Bristol Airport
Civil Aviation Authority
EasyJet
Exeter Airport
Glasgow Prestwick Airport Consultative Committee
Highlands and Islands Airports Ltd
Infratil
London City Airport
Luton Airport
Manchester Airport
Newcastle Airport
RDG Solutions
UK Airport Consultative Committees Liaison Group
Unite (Amicus Section)
Virgin
Title of Proposal


2. A Partial RIA was originally published by DfT in March 2007 to inform consultation with UK industry stakeholders on the above proposal. This version has been updated to take into account views received in response to the consultation, in particular on the nature and scale of potential impacts which may result from implementation of the draft Directive, to inform the Government’s negotiating strategy.

Purpose and Intended Effect of Proposed Directive

Objective

3. The view of the European Commission is that there is a lack of transparency between airport operators and airlines on how airport charges should be calculated and what components should be taken into account in their determination. It notes that most Member States do not possess legislation which regulates airport charges to the satisfaction of both parties, and that disparate charging systems have resulted. The Commission has accordingly proposed to issue a Directive that establishes a common framework to regulate the way airport charges are set.

Background

4. The Commission’s proposal would require Member States to ensure that the charges levied by airports do not discriminate among airport users or air passengers where similar levels of service provision apply. It establishes a consultation procedure between airport operators and their client airlines to inform the setting of airport charges, and specifies the information which each party should provide to serve as the basis for determining the level of charges. It also requires Member States to ensure that airport operators enter into discussions with a view to agreeing service level agreements with their client airlines, and establishes a right of appeal to an independent regulatory authority in the event of disagreement over either airport charges or service levels.

5. As currently proposed, the arrangements would apply to all airports in a Member State with an annual throughput of over one million passengers or 25,000 tonnes of cargo. This would include twenty UK airports on the basis of 2006 data, and 144 across the EU.

6. Other than EU competition law which applies to all sectors of the economy including airports, there are no other existing Europe-wide provisions in the area addressed by the proposal.

Rationale for government intervention

7. The Government’s stated position is that competition is preferable to regulation. Even where competition is weak and there is a risk of anticompetitive effects, there are now wide-ranging powers in domestic and EU law to tackle anti-competitive agreements and practices. As a general rule, these legislative provisions provide the requisite tools to safeguard competition. However, there might, exceptionally, be circumstances which merit consideration of additional regulation but only if it can be expected to deliver a clear net benefit. The draft Directive needs to be measured against these principles.

Regulation of UK airports

8. In the UK, the Airports Act 1986 established a sector specific regulatory regime for airports. This envisages a system of general safeguards for airports meeting a £1 million annual turnover threshold. They must seek permission to levy charges from the Civil Aviation Authority (CAA), and the CAA can take action (under Section 41) if the airport acts in an abusive way.2

9. The CAA does not actively regulate charges at most of these airports. However, an additional level of regulation is provided for airports ‘designated’ by the Secretary of State. For these airports, the CAA is responsible for setting a price cap on aeronautical charges every five years. Currently there are four designated airports in the UK, Heathrow, Gatwick, Stansted and Manchester.

2 Section 41 of the Airports Act 1986 allows the CAA to attach conditions to its permission to levy charges which remedy or prevent the following courses of conduct by an airport operator: unreasonable discrimination, unfair exploitation of bargaining power, unreasonable limitation of rights to carry out relevant activities, and the fixing of charges which are insufficient to cover costs and materially harm (or are designed to materially harm) another airport operator.
10. The UK has a significant number of large or medium-sized airports offering domestic and international services and in mixed ownership. Their geographic proximity and the intensification of airline competition means that airlines and passengers increasingly have a choice of airports, particularly outside the South East where infrastructure constraints are less severe. As such, the UK airport market is competitive and, with the exception of the four currently designated airports, airport operators are free to determine and collect their own charges in line with the market fundamentals and European and domestic competition law.

11. In the UK, Heathrow, Gatwick, Stansted and Manchester airports are currently designated for the purposes of price cap regulation. However, there have been calls for the de-designation of Manchester and Stansted airports, which the Department intends to consult on in the second half of 2007. The cost of this price regulation is significant; the cost of the CAA’s review process that leads to the setting of price caps every five years is in the region of £2 million for the CAA. A similar cost is incurred during this process by the airport operators and by the Competition Commission.

12. The proposed Directive would apply to the four designated airports and at least sixteen others which are currently free from active regulation of their charges, other than the provisions of domestic and EU competition law. It is assumed that the system of designation for the largest airports will remain in place alongside the arrangements introduced through implementation of the Directive. The Directive clearly has potentially far-reaching implications for the operation of all of the airports concerned and their airline customers, arising from the extension of regulation where the UK has to date not found it necessary to do so. The Directive would also affect UK airlines’ use of a large number of airports in other Member States.

Consultation

13. Prior to going out to formal consultation, DfT discussed the Commission’s proposals with the CAA, and held informal discussions with some airport operators and airlines and their representative bodies.

14. A formal consultation with industry stakeholders was launched on 26 March and the relevant documents were published on the DfT website. The consultation period ended on 18 June, The Department hosted a stakeholder symposium during April at which emerging issues were discussed.

15. A total of 22 consultation responses have been received, including ten from airport operators and five from airlines. A summary of responses is to be published on the Department’s website.

16. In summary, airports had a number of concerns about the Directive. Many considered that the 1 million passenger threshold meant the Directive was poorly targeted at airports that might possess significant market power where there could be a case for regulation.

17. Airports were also concerned about:

   — the requirements for annual consultation, particularly where airlines and airports had longer term agreements about charges;
   — the right of appeal to a National Regulator if airlines and airports could not agree about airport charges, which might mean the NRA becoming involved in setting charges at a number of airports;
   — the transparency and information sharing requirements, which would add costs and may cut across airports competitive position;
   — the difficulty of mandatory service quality agreements given airlines varying requirements.

18. Airlines were more supportive of the Directive, in particular mandatory consultation on airport charges and the transparency and information sharing requirements. While one airline agreed with the 1 million passenger threshold, others thought this would lead to the scope being too wide and the Directive needed to be more closely focussed on airports that possessed significant market power.

Options

19. The purpose of the consultation was to help inform the approach the Government’s approach to negotiating of the Directive. A “do nothing” option, in terms of taking no part in the negotiations, would not be in the UK’s interests. Other options range from supporting the Directive fully in its current form to opposing it in its entirety, via a number of positions in which the UK might support some parts of the Directive while actively seeking to modify others.
Costs and Benefits

20. The following sectors and groups are affected:-

— UK airport operators—both the four largest, designated airports, and other airports which exceed the threshold criterion set out in the proposed Directive;
— UK airlines—full service, low-frills, regional and charter carriers who would be subject to the consequences of regulatory intervention at over 100 European airports;
— other businesses, groups and individuals involved in the air transport industry;
— the Government;
— the Civil Aviation Authority; and
— air passengers.

Analysis of costs and benefits

21. Our assessment of the areas in which costs and benefits may arise as a result of the Directive, informed by the responses to consultation, is set out below.

22. The basis of UK policy is that, beyond the exceptional circumstances of airports facing little or no competition, the general safeguards provided by competition law and the Airports Act 1986 provide sufficient protection for airport users.

23. The Commission’s Impact Assessment recognises the merits of the UK system, stating “Only in very few cases, notably that of the UK, is legislation in place that regulates airport charges to the general satisfaction of both market players even if on details disagreement may persist.” However the proposed Directive appears to extend regulation beyond the reach of the current UK system. The costs of the greater degree of regulation proposed by the Directive might accordingly be seen as outweighing its benefits.

Transparency and Consultation

24. The Directive aims to introduce transparency into the process of setting charges at large and medium-sized airports throughout the EU. This seeks to establish a clearer relationship between the level of charges at individual airports and the level of services and facilities which are provided for their airline customers. This may be welcome to airlines operating services to airports where the link between charges and service provision has not previously been clear.

25. The Commission believes that the consultation process proposed by the Directive to inform the determination of airport charges, and its other provisions such as those related to transparency, are likely to exert a downward pressure on the level of airport charges as airport efficiency improves. An alternative view is that the degree of competitive constraint from alternative airports and other modes of transport such as road and rail provides adequate discipline to behaviour. Regulation can adversely affect the normal commercial relationships between airports and their users and has the potential to be time-consuming and impose significant additional costs. For example, the Directive’s provision for a right of appeal to the independent regulatory authority in the event of airport and airline disagreements on price or service quality could work to undermine the incentives for commercial negotiations and dialogue between the two parties, with the result that the dispute resolution process was increasingly turned to.

26. Moreover, if the arrangements already in existence at individual airports are satisfactory, the prescribed consultation process could serve to add costs in to the process. In addition, there is concern that the transparency requirements may compel competitive businesses to reveal commercially sensitive information beyond that required for normal accounting transparency, thereby undermining competition.

27. Medium and smaller airports may not currently possess the information specified to inform the consultation process in the necessary form. The collation of this information and the administration of the consultation itself, and of any subsequent arbitration process conducted by the regulatory authority, would be expected to impose additional costs for the companies concerned. One regional airport operator has estimated the costs of putting the necessary systems in place at £100,000, plus annual running costs of several tens of thousands of pounds.

28. A number of stakeholders have questioned whether a mandatory consultation process is necessary at airports operating in a competitive environment. Alternatively, it may be desirable to reduce the frequency at which consultation occurs; under present arrangements, charges often apply for periods substantially in excess
of 12 months. A less burdensome approach than that currently proposed might be to invoke the consultation process only where an airport operator proposes above-inflation changes to the level of its charges, or to their structure, rather than annually.

Service Level Agreements

29. The Directive requires that airport operators and their client airlines enter into service level agreements, which some may already do. However, if airports and airlines do not currently do this or find it difficult to reach agreement about service levels and seek the input of the independent regulatory authority, the costs in terms of time and resources could increase substantially. Consultation responses on this issue varied, with some pointing to the difficulty of agreeing service quality agreements when airlines might have divergent views. Others supported the principle of consultation on service quality but questioned why this was necessary where airports operated in competitive markets.

Independent Regulatory Authority

30. The CAA would be the primary candidate to assume for the UK the responsibilities envisaged for the independent national regulatory authority (NRA). Those responsibilities would entail additional operating costs for the CAA, which would in turn be passed on to the industry through the current system under which the industry pays charges for its regulatory services, which contribute towards the operating costs of the CAA, plus a rate of return set by the Government. If another body assumed the role of regulatory authority, the assumption should be the Government would again look to the industry to meet the resulting costs. Most consultation responses favoured CAA taking this role.

Dispute Resolution

31. The Directive provides for binding arbitration by the NRA on a wide range of disputes between an airport operator and an airport user. The CAA response noted that this may include requiring the authority to reach a conclusion on the appropriate level of airport charges, which would amount to de facto economic regulation. The CAA said that from its experience of undertaking this role in respect of the four designated airports in the UK, this could be a complex and costly undertaking for the authority.

32. Possible options to reduce the potential costs imposed by the Directive on the regulatory authority would include seeking to narrow the scope of the Directive by focussing it more closely on airports with significant market power.

33. Another option would be to narrow the focus of the roles of the authority. For instance, it might be required to determine disputes on the level of charges and service level agreements only in cases where there is evidence to suggest anti-competitive behaviour by an airport operator or airline, rather than assuming this role in respect of any dispute as currently envisaged.

Incidence of costs

34. Should any increased costs fall to the airport operators as a result of the draft Directive, they would invariably be reflected in the charges levied on airlines. This could have a significant impact on UK carriers who serve predominantly European destinations. The Commission believes that airport charges constitute some 4 to 8% of airlines’ operating costs, although for low cost carriers this figure may be significantly higher. Any incremental increase in charges may not therefore appear that significant in terms of their effect on airlines’ cost base at an individual airport, but where they serve to push up charges at over 100 European airports the aggregate cost effect faced by airlines could be much more significant. However, a number of airline responses argued that possible cost increases would be worth the benefits they thought the Directive would deliver.

35. The costs of legislating in order to transpose the Directive into UK law, including costs associated with prior consultation, will fall to the Government.

Small Firms Impact Test

36. The sectors directly affected by the proposed Directive will be airports, airlines and their users who will include the wider business community. The Directive is intended to have effect at airports with an annual throughput of greater than one million passengers or 25,000 tonnes of cargo. Most airports exceeding these thresholds are substantial organisations employing in excess of 250 people, the commonly accepted definition of a small firm. A limited number of the smaller airports affected, such as Cardiff Wales Airport, may however fall into this category, and other airports which grow to exceed the million passenger threshold in future may also do so. The Directive is expected therefore to encompass a number of airports that would be classed as
“small firms.” The proposed changes to the process of agreeing an airport’s charging structure, the requirement to consult on an annual basis and the extra costs involved in resolving disputes all have the potential to impose proportionately higher costs upon this segment of the UK airports sector, especially in view of the limited resources of the airport operators concerned.

37. Airlines would face the potential costs arising from the introduction of the Directive at the UK airports that are caught by it and also at all European airports which are also subject to the Directive’s provisions. Some regional airlines operating smaller aircraft, such as Air Southwest and Scot Airways,7 and carriers with small fleets of larger aircraft, such as Global Supply Systems, might employ fewer than 250 people, and would therefore fall within the commonly accepted definition of a small firm. As with airports, the resource implications and costs might be expected to be proportionately higher for these smaller companies.

38. In addition, there may be indirect effects for small firms with a presence at the airports concerned, for instance those engaged in the catering and retail sectors, surface transport or baggage handling, and for the travel industry.

39. Any knock-on effect on the price of airline tickets will also have implications for those small firms which utilise air transport for their business travel.

**Competition Assessment**

40. As discussed above, the Government’s stated position is that competition is preferable to regulation. Regulation should only be turned to exceptionally where it would be expected to deliver clear net benefits over domestic/EU competition law. Against this context, this section assesses the nature of existing degree of competition faced by UK airports.

41. The largest operator of UK airports is the BAA group, which owns three of the four largest airports by passenger throughput (Heathrow, Gatwick and Stansted), all situated in the South East of England and all of which are currently designated for price cap regulation. Of these, Heathrow had just under 30% of the UK market in 2005, with Gatwick at 14% and Stansted 10%. These airports face a degree of competition from within the region from Luton Airport, which offers primarily low-cost scheduled and charter services, and London City, with a network of short-haul scheduled services geared towards the business traveller. An element of competition from outside the region comes from airports such as Manchester and Birmingham.

42. BAA also has a very strong presence in the Scottish market, operating three of the four largest airports—Glasgow, Edinburgh and Aberdeen. In the Central Lowlands area, its only competitor is Prestwick, which is active in the low-cost and freight sectors.

43. In total, BAA airports handle over 60% of air passengers in the UK.

44. Outside the South East, Manchester is the only other designated airport, with just under 10% of the national market in 2005. The North of England is well served by airports and Manchester faces competition from, amongst others, Liverpool, Leeds Bradford, Doncaster Sheffield, and further afield East Midlands Airport (although this is owned by the Manchester Airport Group) and Birmingham. However, competition in the long-haul market is limited, with Manchester’s main competitor in this field being Heathrow.

45. Elsewhere, UK airports are seen to operate in a competitive market. Their close geographical locations and separate ownership mean that many airports have a number of natural competitors, examples being Bristol and Cardiff, the two Belfast airports, and the network of airports in the Midlands and the North of England mentioned above.

46. The Office of Fair Trading (OFT) completed its market study into UK airports earlier in the year and has referred BAA’s UK airports to the Competition Commission for detailed investigation. The OFT has also suggested that there may be a case for considering the de-designation of Manchester Airport. In addition the CAA, as part of its price review of the BAA London airports, has recommended that the Government consider de-designating Stansted Airport. The Department expects to consult on these issues in the second half of 2007.

47. At smaller airports, additional regulatory and administrative costs arising from the new procedures could contribute to rising airport charges. This may be of particular concern to the low-cost carriers and other airlines that predominantly use these airports. The operations of a number of such airlines are concentrated at second-tier airports. The possibility of a rising cost base for the operators of smaller airports could restrict the growth of such services, to the detriment of passengers since these airlines have been the main driver in the recent growth of regional airports. In some circumstances, the potential additional costs could offer a competitive advantage to airports of fewer than one million passengers per year which are not subject to the Directive.

3 Source: JP Airline Fleets 2005-06.
48. The airline sector in Europe is characterised by its varied and dynamic nature, operating as it does in a very competitive and liberalised market. It is particularly strong in the UK, with leading carriers across all of the principal segments of the market, including full-service scheduled airlines such as British Airways and Virgin, low-cost carriers (EasyJet, FlyBe) and charter carriers (Thomsonfly, Monarch). The Directive would allow for differentiation in the level of charges, reflecting variations in the quality of service and facilities on offer to carriers.

49. The changes which would result from the implementation of the Directive would not be expected to fundamentally affect the structure of the UK airport industry, or to result in higher set-up or ongoing costs for new firms that existing firms do not have to meet. However, it could impose additional regulatory burdens and costs on existing operators with potential effects for their competitive positions within their respective markets. One airport operator has suggested that the additional costs could affect the viability of many existing services from regional airports.

Enforcement, Sanctions and Monitoring

50. If the Directive is adopted, Member States will be required to legislate to create the laws, regulations and administrative provisions necessary to implement the Directive within 18 months.

51. Member States are also required to nominate or establish an independent regulatory authority which will oversee the correct application of the Directive and intervene in the event of disagreements between airport operators and airport users in a manner similar to that of a mediator in industrial disputes. The precise extent of this role is dependent on the final form of the Directive, but it appears that the authority would not be required to undertake an enforcement role in terms of investigating allegedly inappropriate behaviour and taking punitive action where necessary. The regulatory authority will be required to publish an annual report on its activities.

Recommendation

53. Based on the consultation responses and analysis discussed above the Department’s view is that it cannot support the draft Directive in its current form. The additional regulatory burden imposed on UK airports would be likely to outweigh substantially any potential benefits. The Department also recognises that certain airports can possess significant market power where the benefits of regulation may outweigh the costs. The Department does not believe therefore that opposing the draft Directive in its entirety is an appropriate response. UK airlines welcomed a number of its provisions.

54. The Department’s recommended option for a negotiating strategy is to seek to amend the Directive so that it:

— encourages a competitive airport sector providing choice and value for passengers while minimising regulatory costs;

— facilitates constructive commercial relationship between airports and airlines;

— help reinforce benefits of liberalised air transport services;

— ensure airport users are adequately protected from abuse by airports which have substantial market power; and,

— facilitate new investment incapacity to meet rising demand.

55. The following changes to the draft Directive’s provisions should help achieve this:

— focussing the scope of the Directive much more closely on airports that possess significant market power rather than by a passenger threshold;

— ensuring that consultation requirements are appropriate and not unduly burdensome;

— providing more clarity about the circumstances in which appeals to the NRA can be made and criteria by which regulators should reach decisions;

— ensuring transparency requirements are appropriate, not unduly burdensome and do not affect the competitive position of airports.
**Letter from the Chairman to Jim Fitzpatrick MP**

Thank you for your update to the Committee on the outcome of your consultation. The letter was considered by Sub-Committee B at its meeting on 19 November. The Sub-Committee agreed to keep this proposal under scrutiny.

The Sub-Committee reiterated its concerns about this matter and noted that some of the outstanding issues may be settled during the Council meeting on 30 November. The Sub-Committee is very keen, therefore, to receive a final update on progress made in the Working Group ahead of that Council meeting.

*21 November 2007*

**Letter from Jim Fitzpatrick MP to the Chairman**

Further to my letter of 8 November 2007 I am writing to update you on the above Directive, and to inform you of the Government’s likely position at the forthcoming Transport Council, where the Presidency hope that a General Approach will be reached.

The text which is planned to go to Council on 30 November is still under discussion. However, further to the position I set out in my last letter, it is expected that the text will contain a number of provisions which will help to reduce the potential regulatory burden on the aviation industry.

For example, the requirement for airports and users to consult over the level of charges has been amended so that it is no longer a yearly obligation, but allows for multi-annual agreements. This reduces the potential for a heavy administrative burden and recognises the stability provided by constructive commercial relations. The extent of information which airports need to provide to users when consulting over charges has also been reduced—airports no longer need to provide detailed breakdown of the costs and revenues associated with each type of airport charge. This decreases the burden on airports while still allowing airport users to benefit from appropriate transparency over the basis for the level of charges.

As I explained in my last letter, the UK hopes to secure an amendment allowing existing arrangements, under which a regulator can intervene in airport charge disputes, to continue in place of the Directive’s requirements. If accepted, this will be of particular benefit to the UK, allowing our long standing and successful approach to airport charge regulation by the Civil Aviation Authority to continue.

The scope of the Directive is likely to be set at airports with 5 million passengers per annum, compared to 1 million in the previous draft. This would reduce the number of UK airports the Directive applies to from 20 to 11. This is not our initially preferred position, but given lack of support from other Member States for a more targeted approach to the Directive’s scope, and in light of the other changes to its provisions outlined above, it is acceptable.

In light of these improvements to the draft text is my intention that the UK supports a General Approach on this dossier at the Transport Council on 30 November, subject to the text being along the lines set out above and otherwise being acceptable.

The European Parliament’s TRAN Committee voted on the Rapporteur’s report on 21 November and the document is currently scheduled to have its plenary first reading in January. Following the Council’s consideration of the dossier we will be in a position to assess our progress and formulate our future approach. I will of course keep the Committee informed of progress.

*23 November 2007*

**Letter from the Chairman to Jim Fitzpatrick MP**

Sub-Committee B considered this matter again at its meeting on 3 December 2007, following the evidence given by officials from the Department for Transport, and has decided to clear it from scrutiny.

*4 December 2007*

**Letter from Jim Fitzpatrick MP to the Chairman**

Further to my letter of 23 November and Department for Transport officials’ appearance before Sub-Committee B on 3 December, I am writing to confirm the outcome of discussions on the Airport Charges Directive at Transport Council on 30 November.

The Council reached a General Approach on the Directive. I am pleased to be able to report that the amendments on the requirements for consultation and transparency which I described in my previous letter were part of this text, and that the provision for the UK’s existing arrangements for the settling of disputes to
continue was also included, as my previous letter anticipated. As expected, the Directive’s scope was set to apply to airports with over 5 million passengers per annum, which would cover 11 UK airports.

The Council also resolved a number of other relatively minor outstanding issues, on the subject of the relationship between costs and airport charges, the treatment of airport networks and the length of the Directive’s implementation period. The agreement reached on all of these points was satisfactory for the UK.

The European Parliament’s plenary vote on this Directive is expected in January. I will of course keep you updated on progress.

10 December 2007

Letter from Jim Fitzpatrick MP to the Chairman

Further to my letter of 10 December 2007, I am writing to inform you of the outcome of the European Parliament’s plenary vote on the Airport Charges Directive.

The Parliament adopted 45 amendments which broadly reflect the key areas covered by the Council’s negotiations. Some of these amendments represent minor textual changes with minimal policy implications. These include provisions allowing airports to differentiate the services they provide, providing that this is done on a non-discriminatory basis. Other amendments provide helpful clarification on issues such as compatibility with existing legislation on passengers with reduced mobility, and on the publication of information regarding the airports to which the Directive applies in each Member State. We welcome such amendments. On the issue of the Directive’s scope, the Parliament’s proposed threshold of 5 million passengers per annum and other airports with a 15% national market share is close to the position reached in Council negotiations.

However, other aspects of the Parliament’s proposed text differ from the Council’s approach. We would not wish to see the adoption of certain amendments regarding the independent supervisory body, for example, that complaints must be brought by two unrelated airlines or at least 10% of annual aircraft or passenger numbers at the airport concerned. We consider this approach to be arbitrary and would prefer to see a filter based on objective, non-discriminatory criteria.

The Parliament’s amendments also include references to the pre-financing of new airport infrastructure. Whilst we do not oppose this principle, we do not believe that it is necessary to address this in the Directive, as such issues are best decided at Member State level. On the issue of service level agreements, the Parliament has favoured mandatory fixed-level agreements, whilst the Council would prefer voluntary agreements, in order to retain an element of flexibility and choice for airports and users. Similarly, we do not support the Parliament’s amendment allowing airport managing bodies to opt for either single or a dual till system. Such a provision is unnecessary for purposes of the Directive and regulators or national authorities currently play a key role in determining this in many Member States.

The Parliament has also introduced amendments relating to security charges. In the light of the recent agreement on a replacement for Regulation 2320/2002 on aviation security (EM 12588/05), which includes provisions on security charges, we would prefer not to see separate provisions on this matter in the Airport Charges Directive. This would have the potential to cause confusion, and we would instead support the inclusions a cross-reference to the replacement for Regulation 2320/2002.

These issues will now be subject to negotiations between the Parliament, the Council and the Commission. We will continue to work towards a constructive agreement which we hope will reflect the UK’s key priorities for this Directive. The Council has recently begun its consideration of the Parliament’s amendments and the Slovenian Presidency has indicated that it hopes to make good progress on this dossier, with a view to possible political agreement at the Transport Council on 7–8 April. I will of course keep you updated on future developments.

20 February 2008

AVIATION IN THE EU GREENHOUSE GAS EMISSIONS TRADING SCHEME (EU ETS) (5154/07)

Letter from Jim Fitzpatrick MP, Parliamentary Under Secretary of State, Department for Transport, to the Chairman

Thank you for your letter of 26 June 2007 addressed to Gillian Merron in which you requested further information on proposals for including aviation in the EU emissions trading scheme. Specifically you highlight the issues of free allocation of allowances, in particular a benchmarked allocation methodology, and enforcement provisions. There has been good progress on the dossier in recent months. I therefore consider that now is a good time to provide a further report and to respond to your specific questions.

ALLOCATION METHODS

Since Gillian Merron wrote to you as Minister for Aviation on 14 July 2007\(^5\) there has been some discussion of the allocation methodology for aviation which has primarily been fuelled by the publication of the UK’s study into the impacts of different benchmarking criteria. We have attended a number of European Council working groups at which benchmarking has been discussed, in particular we attended an experts’ group in June, at which we presented the results of the UK study. The experts’ group was well attended and provided an opportunity for a number of Member States to put forward their preferred allocation methodology. The proposals ranged from 100% auctioning to complicated benchmarks which took into account average fleet age and national economic growth rates.

Since the discussions in the experts’ group and the publication of the UK study into benchmarking, there has been some support in the working group for a complicated benchmark that attempts to address some of the perceived inequalities of including aviation in the EU emissions trading scheme (ETS). However, many more States, including the UK, have recently seen the value of having a simple benchmark which rewards environmental efficiency and provides an incentive for future action and have supported the benchmark proposed by the Commission (revenue tonne kilometre\(^6\)(RTK)). Discussions have now moved on to the possibility of adjusting the RTK benchmark to take into account air traffic management inefficiencies in flight routine and the additional weight required by aircraft to carry passengers instead of freight, but these have been as yet inconclusive.

The European Parliamentary Committees have also considered the allocation methodology for aviation. The Environment, Transport, Finance and Industry Committees voted on this directive recently with three of the Committees voting for a change in the proposed benchmark. The Environment Committee supported RTK benchmark with a higher standard passenger weight; the Industry Committee voted in favour of a RTK benchmark which took into account the actual flight path rather than the great circle distance; and the Transport Committee supported the use of a capacity benchmark based on an aircraft’s available capacity as opposed to its output.

Discussions on auctioning have run alongside those on the benchmark, however there has been a clear divide between those who support higher levels of auctioning and those who support the low levels (approximately 3%) proposed by the Commission. Only the Industry Committee supported very low levels of auctioning, while Transport supported 20%, and Finance and Environment Committees supported 50%. The UK, along with several other Member States, has argued for significantly higher levels of auctioning compared to the Commission’s proposal, given the experience of Phase 1 where operators received significant windfall profits and to ensure adequate access for new or fast growing airlines.

ENFORCEMENT PROVISIONS

The detailed arrangements for application and enforcement of penalties remain a pending issue. Airlines operate very differently from national ground-based installations. The UK has started to consider the most appropriate enforcement provisions for those airlines that it would administer and we have engaged with the Commission and other Member States on this matter. In order to make decisions on the way forward we would like greater clarity on the details of the scheme to be applied and are giving priority to that. However, our work plan includes the need for full analysis of the options. We shall consult stakeholders and keep them informed of developments when the work progresses.

PROGRESS TO DATE

ICAO Assembly

I would also like to update you more generally on the progress to date on including aviation in the EU ETS. As you may be aware, the International Civil Aviation Organisation (ICAO) held its triennial Assembly in September at which the UK, with its European partners, worked constructively to try to agree a positive way forward that would have demonstrated ICAO’s leadership role in aviation and climate change and left the way clear for Europe to implement its proposal for aviation emissions trading. However, several key non-European states insisted on text in an Assembly resolution on the environment that would effectively have prevented Europe from implementing its emissions trading proposal as currently planned. As a result, the UK, along with the rest of Europe, was forced to enter a reservation to this part of the resolution. The consequence of this is that Europe is not bound by that part of the resolution and is free to continue with its plans to bring aviation within its emissions trading scheme, and will do so.


\(^6\) RTK is a relatively simplistic benchmark that is already used by the aviation industry. It is based on the number of RTK that airlines fly i.e. the more passengers and freight on board a plane per flight, the more free allowances airlines will receive.
Another outcome of the Assembly was the establishment of a high level Group on International Aviation and Climate Change that will, amongst other things, develop a global framework for making emissions reductions and to consider global aspirational efficiency goals. The UK will, through European representatives, take an active role in the work of this Group, and continue to engage in other ICAO work, to try to make progress towards a global solution.

**Progress in EU negotiations**

As we mentioned in our previous correspondence, negotiations at a European level went well in the first half of the year with general agreement on the scope of the scheme and the inclusion of third country operators. At the June Environment Council, the German Presidency presented a progress report under Any Other Business which outlined the common areas of agreement, disagreement and areas for compromise.

This dossier has now been taken forward by the Portuguese Presidency who were particularly keen to achieve a first reading agreement with the European Parliament. However, following a lack of consensus amongst Member States on the detail of the scheme and the vote in the European Parliament, the draft directive will go to a second reading in 2008. The Portuguese Presidency is now indicating that its objective is to reach a political agreement on a common position at the December Environment Council.

**European Parliament vote**

The European Parliament held its first reading plenary vote on the proposal to include aviation in the EU ETS on 13 November. 59 amendments were made to the Commission’s proposal. The results of the debate demonstrated the European Parliament’s desire for an ambitious scheme for aviation. Specifically the plenary vote adopted the following amendments:

- an earlier start date of 2011 for all arriving and departing flights (amendment 78);
- a tighter emissions cap based on 90% of the 2004–06 carbon dioxide emissions (amendments 61 & 24);
- 25% auctioning of initial allocation (amendment 74);
- the introduction of an efficiency indicator (amendment 42);
- the establishment of a new entrant reserve; the exemption of all aircraft under 20,000 kg on the condition that those aircraft operators participate in an offset scheme (amendment 63); and
- the use of a carbon dioxide multiplier (amendments 10 & 65).

The Environment Council working group has yet to consider the outcome of the European Parliament’s vote and it appears unlikely at this stage that the adopted amendments will be included in any political agreement in December. However, more generally many Member States, including the UK have welcomed the European Parliament’s vote as an important milestone towards the goal of including aviation in the EU ETS.

**UK Consultation**

On a national level, the public consultation on the Commission’s proposal ended in June and the summary of consultation responses was published on the DfT website in October\(^7\). The consultation demonstrated that there was consensus in favour of the inclusion of aviation in the EU ETS and broad agreement on some of the key issues such as scope and timing, however there was a divergence of opinion on the detail of the design options, particularly around the level of auctioning and the use of a multiplier.

**Climate Change Bill**

Following pre-legislative scrutiny of, and public consultation on, the draft Climate Change Bill, we have made some important changes in our approach to aviation. Firstly, we will ask the Committee on Climate Change that will be established under the Bill to look at the implications of including international aviation and shipping emissions in the UK’s targets, as part of its overall review of the UK’s 2050 target. Secondly, when the EU ETS rules on aviation have been finalised, we will ask the Committee for its advice on whether there is a methodology for including international aviation emissions within the framework provided by the Bill that it workable and compatible with the EU ETS and takes account of progress in the United Nations Framework Convention on Climate Change and the wider international context, and on the impacts of adopting it.

\(^7\) [http://www.dft.gov.uk/consultations/closed/aviationemissionstrading/consrespeuemissionstrad](http://www.dft.gov.uk/consultations/closed/aviationemissionstrading/consrespeuemissionstrad)
Reform of Air Passenger Duty

Alongside the proposal to include aviation in the EU ETS, we have also been developing our policy on the use of economic instruments to tackle the climate change impacts of aviation. The Government announced the reform of Air Passenger Duty in the Pre-Budget Report 2007. The change to a per plane duty to come into force in November 2009, aims to send a signal more aligned with environmental impacts and ensures that aviation pays a fair contribution towards the Government’s spending priorities, including public transport and the environment.

The Government will work closely with industry and stakeholders on the detail of this proposal including ways to make the duty better correlated to distance travelled and encourage more planes to fly at full capacity. The Government aims to consult on these plans early next year. In introducing this duty, the Government will take into account the impact on freight and on transit and transfer passengers, consistent with its wider economic and social objectives.

Transport Strategy

The Government has also now formally responded to the Stern Review on the Economics of Climate Change and the Eddington Transport Study in our discussion documents, ‘Towards a Sustainable Transport System: Supporting economic growth in a low carbon world’, published at the end of October. This response is the first stage in a consultation process to deliver a transport system that meets the key objectives of supporting the country’s economic competitiveness and helping address climate change.

10 December 2007

Letter from Jim Fitzpatrick MP to the Chairman

I write further to my letter of 10 December, which included information you had requested on proposals for including aviation in the EU emissions trading scheme and notified you of the prospect of a political agreement at the Environment Council on 20 December. I understand that unfortunately Sub-Committee B was unable to consider this letter before recess.

I am therefore writing to apologise for the tight timing which prevented the Sub-Committee from considering my letter ahead of the Council. I had intended to send my letter earlier but, regrettably, it had to be delayed due to key last-minute discussions between Ministers to confirm the UK position on several areas of the proposal. The consequent lack of scrutiny clearance was, of course, a matter of great concern to us. However, as you will know, the UK has always strongly supported the inclusion of aviation into the EU emissions trading scheme, as has Sub-Committee B, and has played a leading role in campaigning for the proposal. We therefore felt that, even though scrutiny had not yet been completed, the UK should support the political agreement. I believe that the scheme voted through improves the Commission’s proposal in many areas and represents an important step in securing the UK’s priority of an environmentally ambitious scheme that is implemented as soon as possible. I hope that the Sub-Committee is also content with the improvements that have been secured to the original proposal.

I thought you would also wish to have a summary of the details of the political agreement reached by EU Ministers on 20 December.

Summary of Environment Council Agreement

1. Timing

Commission proposal: Phased approach—intra EU flights 2011, all flights arriving at and departing from EU airports from 2012.

Council agreement: Removal of phased approach—inclusion of all flights arriving at and departing from EU airports from 2012.
2. **Level of Emissions Cap**
   Commission proposal: 100% of average 2004-06 emissions.
   Council agreement: As Commission proposal.

3. **Auctioning**
   Commission proposal: Phase II—Harmonised level equivalent to average of auctioning level of those Member State National Allocation Plans (NAPs) with auctioning.
   Council agreement: Harmonised level of 10% auctioning in 2012. Auctioning level for 2013 onwards to be negotiated in the wider EU ETS Review negotiations. Removal of binding hypothecation clause.

4. **Benchmark Used for Initial Allocation**
   Commission proposal: Revenue Tonne Kilometres (RTK) benchmark where a passenger is equivalent to 100kg.
   Council agreement: RTK benchmark where passenger weight is equivalent to 110kg and distance includes the addition of 95km fixed factor to take account of indirect routing and airport congestion.

5. **Special Reserve**
   Commission proposal: No special treatment for either new entrants or fast-growing airlines.
   Council agreement: the creation of a reserve for new entrants fast-growing airlines from within the cap. The reserve will be 3% of the total capped allowances for that phase. These allowances would be allocated to operators in the 3rd year of a phase—to those who begin operating between the year for benchmarking data and 2nd year of phase and also to those whose revenue tonne kilometres total has increased by more than 18% per annum in the same period. A review of the continuing need for this reserve in 2015 was also included.

6. **Open Trading Scheme. Access to Certified Emission Reductions (CERs) and Emission Reduction Units (ERUs)**
   Commission proposal: Fully open trading scheme that allows for full convertibility between aviation allowances and EU allowances. Access to CERs and ERUs set at the average of the level in Member States’ national allocation plans.
   Council agreement: Open trading scheme but with the removal of the clause that allows convertibility between aviation allowances and EU allowances. 15% access to CERs and ERUs in 2012. Future access to be decided as part of ETS Review negotiations.

7. **Review Clause**
   Commission proposal: None.
   Council agreement: Inclusion of text that obliges the Commission to review the effectiveness of the scheme for aviation in 2015.

8. **Enforcement**
   Commission proposal: Member State action.
   Council agreement: Inclusion of text that describes an escalation process where, at the point where a Member State has taken all reasonable action unilaterally, the matter is referred to the Community and subsequent action is taken by the Community as a whole. This approach is similar to the approach as set out in the safety Regulation 2111/2005 which establishes a Community list of air carriers subject to an operating ban within the Community. Work is ongoing to identify the appropriate regulator within the UK and ensure that legal provision is provided for that regulator to undertake the necessary actions to ensure compliance with the scheme.
9. Exemptions

Commission proposal: 5.7t weight threshold. Exemption of all Heads of State flights. No special treatment of routes subject to Public Service Obligations (PSOs).

Council agreement: 5.7t weight threshold. Heads of State exemption restricted to non-EU. Exemption for PSOs where they are either on routes within Ultra Peripheral Regions or on routes with annual seat capacity below 30,000. Exemption for operators who operate at a frequency lower than 243 flights into, out of, or within the EU in a four month period.

As you can see, whilst the Environment Council vote did not consider the amendments voted through by the European Parliament, on key areas such as timing of the scheme and auctioning level the Council has, I believe, moved towards Parliament’s position. We are therefore hopeful that agreement of the Directive should be achieved after second reading, and I will, of course, continue to keep you informed of further progress in the negotiations.

8 January 2008

Letter from the Chairman to Jim Fitzpatrick MP

Thank you for your letters dated 10 December and 8 January updating the Committee on the negotiations to include the aviation sector in the EU ETS. Sub-Committee B considered these letters at its meeting of 14 January and agreed to clear the dossier from scrutiny.

The Committee is concerned that any emissions trading scheme must be properly regulated to ensure that it achieves its aims in reducing emissions. When clearer proposals are available on how the permits will be traded and how such trading will be regulated, the Committee would be interested in taking further evidence.

15 January 2008

AVIATION SECURITY AUDITS: EUROPEAN COMMUNITY AND THE INTERNATIONAL CIVIL AVIATION ORGANIZATION (ICAO)

Letter from Jim Fitzpatrick MP, Parliamentary Under Secretary of State, Department for Transport, to the Chairman

At the Transport Council meeting on 30 November a mandate was adopted for the Commission to open negotiations on an agreement regarding aviation security audits/inspections and related matters between the EC and ICAO. The aim of these negotiations is to reduce the burden of multiple audits/inspections on Member States, which are currently very resource intensive.

ICAO conducts a programme of security audits in all its Contracting States with the objective of determining compliance with the Standards and Recommended Practices (SARPs) in Annex 17 of ICAO’s Convention on International Civil Aviation. Audits can include inspections of airports, airlines and National Security Programmes. Similarly there is an EC inspection regime covering much the same areas but seeking compliance with EC Regulation 2320/2002 which established common rules in the field of civil aviation security.

There is also an obligation under ICAO Annex 17 and the EC Regulation 1217/03 for Member States to undertake national quality control activities. Under EC Regulation 1217/03, the results of these activities have to be submitted to the Commission each year in an annual report. In addition when the Commission inspect a Member State’s airport they can also request such information.

We look forward to the benefits that would accrue from a satisfactory agreement being reached. The agreement will, necessarily, involve the EC providing some reassurances to ICAO about the validity and effectiveness of their regulatory process. We shall be looking to ensure the confidentiality of any information regarding the EC inspection process provided to ICAO.

11 January 2008

CIVIL AVIATION SECURITY (12588/05)

Letter from Jim Fitzpatrick MP, Parliamentary Under Secretary of State, Department for Transport, to the Chairman

I wrote to you on 19 July 2007 informing you that this proposed regulation would be subject to the conciliation process, as it had not been possible to find an acceptable compromise with the European Parliament on those issues which had most divided the Parliament and the Council. Your Committee will wish to be aware that on 16 January 2008 the Conciliation Committee formally approved a joint text on a

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replacement for EC Regulation 2320/2002 which established common rules in the field of Civil aviation security. This is expected to be formally adopted by the Council and European Parliament by the end of March 2008.

The present EU Framework regulation on aviation security (2320/02) was developed as an urgent initiative immediately after the 9/11 terrorist attacks. However, in retrospect certain of its elements have proved inconsistent or unclear, and the level of detail was felt inappropriate for a document which does not have confidential status. For these reasons the European Commission, in September 2005, proposed a replacement Regulation to take the sensitive material out of the public domain and clear up points which have proved open to interpretation.

However, the European Parliament put forward a number of amendments to the proposal which gave the UK and other Member States major difficulties. The Council’s rejection of these precipitated the formal conciliation process to try to reach agreement between the two sides. One area of disagreement was over the European Parliament’s desire to see Member States placed under an obligation to fund part of the cost of implementing the security measures. The European Parliament have stepped back from this desire and have agreed that each Member State is free to decide how security costs should be met. However, during this year the Commission will be undertaking a study of the issues surrounding security charging, in particular transparency, cost-relatedness and competition effects, and “if appropriate” it may then bring forward legislative proposals.

The other sticking point was the European Parliament’s desire to have a greater say in the development of security policy. They sought to achieve this through the new form of comitology known as Regulatory Procedure With Scrutiny (RPWS) which gives the European Parliament the right of veto, on specific and limited grounds, over the proposals made by the Commission. This would be in circumstances where the Commission is exercising its powers delegated to it to make measures that either amend or supplement EU legislation.

The UK’s main concern on this point was that MEPs do not have access to intelligence reporting and so cannot judge the proportionality or otherwise of any proposed comitology measure. A way forward, however, was found and a method agreed for approving future security standards. This takes the form of “common basic standards” to be agreed in co-decision and laid down in the Annex to the new Framework Regulation. These standards would be public, and therefore necessarily cast in general terms. Secondly, “general measures” designed to supplement these common basic standards will be adopted in “intermediate” regulation, using the RPWS procedure. These too will be published and will also need to be cast in more general terms. Lastly there will be “detailed measures” for implementing these “general measures” which will be under the “normal” comitology procedure, i.e. determined by the Commission and Member States. The extent to which all, or part, of each of these measures will be published will be dealt with on a case by case basis in accordance with the terms of confidentiality set out in the regulation and will specifically take into account the sensitive nature of the information.

It is not possible to fully predict whether this method will, in practice, operate as described above, as RPWS has not been used in this way before. Overall, however, the Government is content with the compromise achieved in conciliation, and welcomes this new regulation.

I would, of course, be happy to send you an Explanatory Memorandum on the approved Joint Text when it is issued, if your Committee would find it helpful.

14 February 2008

CLEAN AND ENERGY EFFICIENT ROAD TRANSPORT VEHICLES (5113/08)

Letter from the Chairman to Jim Fitzpatrick MP, Parliamentary Under Secretary of State, Department for Transport

Thank you very much for your Explanatory Memorandum, sent 30 January 2008, which Sub-Committee B considered at its meeting on Monday 18 February 2008.

The Committee believes in the need to adopt measures to tackle transport’s contribution to climate change and the use of sustainable procurement in that context. We share, however, your concerns regarding the proportionality of the Commissions’s proposals. We also share your concerns about what is meant by public transport services and to what extent these proposals would apply only to public sector services, or if they would affect services provided more widely. The Committee would be grateful if you could inform us of the position you plan to take to address these concerns once the Working Group discussions commence. We would also like to be updated on the progress of these discussions ahead of the debate in the Council in June.
The Committee would also welcome the opportunity to see the Government’s estimates on the Proposal’s financial costs and benefits as soon as they are available.

19 February 2008

CLEAN ROAD TRANSPORT VEHICLES (5130/06)

Letter from Jim Fitzpatrick MP, Parliamentary Under Secretary of State, Department for Transport, to the Chairman

I am writing to keep you informed on the above proposal, which seems unlikely to make further progress due to the position in the European Parliament.

The proposal was considered by the European Parliament’s Environment, Public Health and Food Safety Committee in 2006. The Committee voted decisively to reject the proposal, which they felt had been put forward too late and therefore, in its current form, would not have the desired impact on the environment and human health. The Committee therefore called on the Commission to withdraw the proposal and to focus its efforts instead on coming forward with a proposal on environmentally ambitious, technology-driving and stringent EURO VI standards as soon as possible.

The Committee’s view has not yet been put to a European Parliamentary Plenary session. On several occasions dates have been set for plenary consideration, only to be deferred to a later date. This has recently happened again, and the date currently scheduled for plenary consideration is 14 January 2008.

As you may recall, the Government also had doubts about whether the proposal was likely to be effective in meeting its objectives, a view which appeared to be shared by many other Member States. There has in fact been very little discussion of the proposal by Member States, and none at all since the EP Committee’s vote. It seems unlikely that there will be any further discussion of the proposal unless the EP plenary takes a different view to that taken by the Committee.

The European Commission is expected to publish the proposals on Euro VI referred to by the EP Committee at the end of this year.

I will, of course, write to your Committee again if there is any change in the current position.

7 November 2007

Letter from the Chairman to Jim Fitzpatrick MP

Thank you for your letter of 7 November which Sub-Committee B considered at its meeting on 19 November.

We note the rejection of the proposal by the European Parliament’s Committee on Environment, Public Health and Food Safety, and the lack of support which the proposal appears to enjoy among Member States.

We are content to lift scrutiny subject to the understanding that if the proposal is revived you will deposit a supplementary EM for our consideration.

21 November 2007

COMPUTERISED RESERVATION SYSTEMS (14526/07)

Letter from the Chairman to Jim Fitzpatrick MP, Parliamentary Under Secretary of State, Department for Transport

Thank you for the clear and concise EM concerning Computerised Reservation Systems. It was considered by Sub-Committee B at its meeting of 14 January 2008 and was cleared from scrutiny.

The Committee would, however, be grateful for further information on how the Government intends to ensure that sufficient safeguards are retained to take account of the involvement of Air France, Lufthansa and Iberia in the Amadeus CRS.

16 January 2008
Letter from Jim Fitzpatrick MP to the Chairman

I write further to Explanatory Memorandum 14526/07 submitted on 10 December 2007, and to your subsequent request for further information on appropriate parent carrier provisions in the proposed Regulation.

Negotiations in Working Group have progressed well, and I am pleased to report that provisions on parent carriers were maintained without any amendments to the Commission’s proposed safeguards in Article 10. This reflects the UK’s position and provides a safeguard against potential anti-Computerised Reservation System (CRS) vendors, such as in the involvement of Air France, Lufthansa and Iberia in the Amadeus CRS.

There was broad consensus in Working Group on the revision of this Code of Conduct. The key amendments are welcome to the Government. These changes include a reference to compatibility with the increased fare transparency requirements set out in the Regulation on common rules for the operation of air transport services in the Community, which was the subject of EM 11829/06 and is expected to be adopted before long as a second reading deal. A requirement to clearly identify flights operated by air carriers subject to an operating ban pursuant to the ‘Air Safety Committee’s blacklist’ [Regulation (EC) 2111/2005] was also introduced, with the aim of making such information clearly available to the agent and consumer at the point of booking.

On the issue of Marketing Information Date Tapes (MIDT), opinion differs on whether travel agencies should be identified (as supported by airlines and CRS) or whether they should remain anonymous (as requested by travel agents). The Council adopted a compromise stance on this issue, allowing for agency identification only where the subscriber and the system vendor agree to conditions for its appropriate use. We believe that this provides a safeguard against the anti-competitive use of such data, whilst allowing access to a potentially valuable source of information.

Amendments were also introduced on the rules applicable to principal displays, in order to provide the subscriber with choice over whether flight options should be displayed according to fares or the most direct connection. Detail regarding the order of such rankings has also been added with the aim of providing the subscriber with a fair choice of travel options, and to encourage the display of direct train services alongside air travel options.

The proposal will be put to the Transport Council on 7–8 April 2008, where it is hoped that a General Approach will be reached. The European Parliament’s Rapporteur is currently considering this issue. It is expected that the report will be debated in TRAN Committee in early April, and voted on at the end of May, before being considered at plenary in June or July. We will continue to work towards a constructive agreement which we hope will reflect the UK’s key priorities for this Regulation.

I hope that this update is useful. I will of course keep you informed of future developments.

12 March 2008

CROSS-BORDER ELECTRICITY AND GAS NETWORKS (13043/07, 13045/07, 13048/07, 13049/07)

Letter from Malcolm Wicks MP, Minister of State for Energy, Department for Business, Enterprise and Regulatory Reform, to the Chairman

I am writing to revise some of the figures appearing in the above Explanatory Memoranda and their associated Impact Assessment. I apologise for having to do this—I am afraid some confusion arose in their drafting owing to the number of documents that needed to be produced in relation to the whole package of EU energy liberalisation measures the Commission produced in September.

A single Impact Assessment was submitted covering both proposal 13045/07 and 13049/07. This gave a figure for the total average annual benefits of the proposed revisions to both the Regulation and the Directive as £95 million a year, starting in 2010/11. Meanwhile an earlier calculation, a figure of £142 million a year, was given in the Explanatory Memoranda. The correct figure has since been calculated as £132 million per annum.

A revised version of the Impact Assessment and the two Explanatory Memoranda is attached, reflecting these figures and a further small reduction of the total cost over 20 years of the proposals from £439 million to £407 million.

There has also been a recalculation of the cost of the proposals for electricity resulting in a small reduction in the cost over 20 years from £475 million to £470 million. I attach a revised Impact Assessment for this too.
These changes do not affect the substance of the conclusions of the analyses, as the predicted benefits significantly outweigh the costs.

My apologies once again.

16 November 2007

ELECTRONIC COMMUNICATIONS (15371/07, 15379/07, 15387/07, 15416/07, 15422/07)

Letter from the Chairman to Stephen Timms MP, Minister of State for Competitiveness, Department for Business, Enterprise and Regulatory Reform

Thank you for your Explanatory Memoranda covering the various proposals put forward by the Commission on the regulatory framework for electronic communications. Sub-Committee B considered these documents at its meeting of 14 January. The Committee agreed to hold these documents under scrutiny as negotiations progress.

The Committee would, therefore, appreciate further updates from the Minister in due course.

15 January 2008

ELECTRONIC COMMUNICATIONS, NETWORKS AND SERVICES: RELEVANT MARKETS

Letter from the Chairman to Stephen Timms MP, Minister of State for Competitiveness, Department for Business, Enterprise and Regulatory Reform

Thank you for your Explanatory Memorandum covering the number of relevant markets included in the Commission’s recommendation. This issue was considered by Sub-Committee B during its meeting of 14 January.

The Committee agreed with the Government’s concerns over the premature removal of some markets from the recommendation. As this is not a legislative matter, the EM in question is cleared from scrutiny.

15 January 2008

END-OF-LIFE VEHICLES (5413/07)

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

Sub-Committee B has been holding this item under scrutiny since 20 February 2007. We last wrote to your predecessor, Jim Fitzpatrick MP, regarding this item on 28 February 2007. We asked to be kept informed of the findings of the Stakeholder Working Group as well as the analysis of all available options. We have not yet received any further information and would appreciate an update on developments.

13 November 2007

Letter from Malcolm Wicks MP, Minister of State for Energy, Department for Business, Enterprise and Regulatory Reform, to the Chairman

Thank you for your letter of 13 November 2007 to Pat McFadden, asking for an update on developments in respect of the 2015 end-of-life vehicles recovery target in the ELV Directive.

Your earlier letter of 28 February 2007 to Jim Fitzpatrick expressed concern about the achievability of the 2015 target set down in the Directive and confirmed in the Commission’s report, given that its composition—95% recovery of the tonnage of ELVs, divided into a minimum of 85% reuse and recycling, and a maximum of 10% energy recovery—had been determined before evidence as available to assess performance against the earlier target in the Directive of 85% target (minimum 80% reuse/recycling; maximum 5% energy recovery).

The Department is nearing the end of its calculation of the UK’s performance against the 2006 recovery target in the ELV Directive. Declarations of performance received from parties obligated under the ELV (Producer Responsibility) Regulations 2005, namely vehicle manufacturers and independent Authorised Treatment Facilities, are currently being audited. Although still too early to arrive at a final figure, our assessment shows that the UK has bettered its estimated 2005 performance of 81%. Under the terms of the ELV Directive, Member States have until June this year to report 2006 performance to the European Commission.

9 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p68.
It has become clear during our assessment of these returns that only a very limited amount of material is being sent for energy recovery. The vast majority is being reused, in the form of spare parts, or recycled, as secondary raw materials. In the light of this data, and recent intelligence that ELV metal shredding companies are developing post-shredder residue separation technologies, we believe at the moment, while reserving final judgment, that the structure of the 2015 target, which the Commission has recommended should not be changed, may not present the difficulties out earlier examination suggested. Consultation on the Commission’s recommendation with interested business organisations in UK has not resulted in a consensus, with several arguing that proper consideration of the issue could not be given until 2006 performance was clear.

I will write to you again with a further update when our 2006 data is complete.

28 January 2008

Letter from the Chairman to Malcolm Wicks MP

Thank you for your letter dated 28 January 2008 on this subject. Sub-Committee B considered it at its meeting of 4 February. The Committee took note of the update and agreed to continue to hold the dossier under scrutiny until more complete figures are available.

The Committee would also appreciate some further information on the proposed targets:

— Roughly how many end-of-life vehicles are included in this target and has this number changed since the 2006 targets were agreed?
— What is the breakdown of what is considered as reuse? Does this include the shipping of vehicles outside of the EU, and if so what measures are taken to ensure that such vehicles are appropriately dealt with?
— What measures are being taken to ensure that abandoned vehicles are recovered? What statistics are available relating to this?

5 February 2008

Letter from Malcolm Wicks MP to the Chairman

Thank you for your letter of 5 February on this subject. I am happy to provide the further information you have requested. For convenience, I repeat the detail of your questions.

ROUNGLY HOW MANY ELVS ARE INCLUDED IN THIS TARGET AND HAS THE NUMBER CHANGED SINCE THE 2006 TARGETS WERE AGREED?

The Addendum to the Commission’s report contains the estimate that 13.8 million vehicles will be scrapped in the EU in 2015. The report’s estimate for 2006 is 11.1 million vehicles. The Explanatory Memorandum which accompanied publication of the proposed ELV Directive in 1997 contained an estimate of between 8 and 9 million ELVs per annum in the EU-15, and simply expressed the view that this number would increase in future years. At that time, the DTI’s Preliminary Compliance Cost Assessment estimated 1.5 million ELVs for both 2006 and 2015 in the UK. The DTI’s Regulatory Impact Assessment, produced for a revised text of the Directive in 1999, put the UK figure at 1.7 million vehicles per annum.

WHAT IS THE BREAKDOWN OF WHAT IS CONSIDERED RE-USE? DOES THIS INCLUDE SHIPPING OF VEHICLES OUTSIDE THE EU, AND IF SO WHAT MEASURES ARE TAKEN TO ENSURE THAT SUCH VEHICLES ARE APPROPRIATELY DEALT WITH?

This term is defined in the ELV Directive as meaning “any operation by which components of ELVs are used for the same purpose for which they were conceived”. It follows that re-use is subsequent to the dismantling process, with components being removed from the ELVs at Authorised Treatment Facilities and sold as spare parts. Under the terms of the Directive, ELVs may only be treated by Authorised Treatment Facilities. However, Commission Decision 2005/293/EC, laying down the detailed rules on the monitoring of reuse/recovery and reuse/recycling targets set out in the Directive, contains the following recital:

“As a consequence of the internal market, Member States may export the ELVs generated on their territory to other countries for further treatment. In order to minimise allocation problems and to avoid extensive monitoring and calculation efforts, the recovery and recycling rates from exported vehicle parts will be credited to the exporting Member States.”
The movement of undepolluted end-of-life vehicles overseas would be subject to the Transfrontier Shipments of Waste legislation. We are not aware of any ELVs being moved legally out of the UK in undepolluted form, as hazardous waste. There is, however, some overseas trade in dismantled vehicle spare parts, and these are counted towards UK ELV recovery performance.

**What Measures are Being Taken to Ensure that Abandoned Vehicles are Recovered? What Statistics are Available Relating to this?**

The Commission’s report makes no mention of abandoned vehicles. In the UK, numbers have reduced significantly in recent years, due to a number of measures which the Government have taken, including the introduction of an entitlement to convenient “free take-back”, as required by the Directive, and various campaigns to make abandonment more difficult, or to nip it in the bud (for example, the clamping of untaxed vehicles). A combination of these factors and the prevailing high value of scrap metal has resulted in a reduction in the number of recorded abandoned vehicles in England from a high of 290,000 in 2002/03 to 81,000 in 2006/7.

10 March 2008

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

Thank you for your letter of 10 March 2008. It was considered by Sub-Committee B at its meeting of 31 March. The Committee agreed to keep the dossier under scrutiny until it is clear that the UK has been able to meet its 2006 targets.

1 April 2008

**ENERGY FROM RENEWABLE SOURCES (5421/08)**

**Letter from the Chairman to Malcolm Wicks MP, Minister of State for Energy, Department for Business, Enterprise & Regulatory Reform**

Thank you for your Explanatory Memorandum on this dossier. It was considered by Sub-Committee B during its meeting on 25 February 2008. The Committee is about to launch an inquiry into matters relating to this proposal and it was, therefore, decided to hold it under scrutiny.

As part of this new inquiry the Committee would be grateful if you would be able to give oral evidence on this dossier, possibly on either 3 or 17 March.

26 February 2008

**eSAFETY COMMUNICATION (12383/05, 15932/06)**

**Letter from the Rt Hon Rosie Winterton MP, Minister of State, Department for Transport, to the Chairman**

I am writing to update you on the Government’s position in relation to the repeated call by the Commission for Member States to sign the Memorandum of Understanding (MoU) on eCall, and to inform you of the results of the Government’s research and consultation.

As you may recall from Explanatory Memorandum (EM12383/05), the Government view was that we should not sign the MoU until we had undertaken our own review of the business case and the implications that 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.

Sub-Committee B also considered Explanatory Memorandum 15932/06 on the above proposal on 22 January 2007 and responded that it would like an update on the independent analysis that DfT had commissioned to identify whether the positive cost/benefits cited in the EC communication was transferable to the UK.

Unfortunately, the length of the research period and the detailed consultation with Government Departments and other key stakeholders who share a common interest in eCall, has delayed the provision of this update to your Committee until now.

I am pleased to now be able to enclose a copy of the report “eCall—The Case for Deployment in the UK” (not printed) which is being published by my Department. The study found that the pan-European business case for eCall is not transferable to the UK. Given the UK’s already well established emergency call systems (e.g. eCall is a system that manually or automatically generates a call from a vehicle following an accident, establishing a voice link to the emergency services, whilst transmitting vehicle and location data.}

999/112), the total costs of implementing eCall outweigh the likely benefits. Total predicted benefits from 2010–2020 ranged from £389 million to £1,681 million, with total costs ranging from £2,282 million to £9,053 million, giving a benefit-cost ratio of between 0.1 and 0.7:1. In addition, mobile telecoms operators would need to upgrade their infrastructures to enable the efficient operation of the new system, and further discussion is required between central government, local government and the network operators to agree who would bear the cost of each connected eCall. The existing 999 service is already provided free to users, the call costs being supported by the Fixed and Mobile Network Operators.

As you know, the Commission issued a further communication in September 2007 (EM 13922/07, COM (2007) 541 Final), calling for Member States to sign the MoU and to prepare for a roll-out of pan-European eCall by 2010. However, in addition to concerns over the benefit-cost ratio in the UK, the functional specification and technical details of eCall have not yet been finalised. There are uncertainties over whether the system in its current form can deliver the full potential benefits and whether it would be acceptable to UK Mobile Network Operators. This makes the implementation date of 2010 an unrealistic target.

In addition, the eCall Driving Group that negotiated and drafted the MoU has been disbanded, so there is no longer a platform to co-ordinate ongoing eCall activity which would enable us to engage more closely in the development process, and to address our concerns. We intend to press the Commission to create such a forum. This may also help to understand the concerns of other Member States, given that only 13 have signed the MoU to date.

After exhaustive consideration and consultation with other Government Departments and devolved administrations, it has been agreed that the UK will not sign the MoU at the current time as we remain unconvinced, following our independent review, that the cost of implementing eCall justifies the benefits. This decision will enable us to apply pressure on the Commission to address our concerns, and to assess the case for signing based on further investigation and evidence, whilst reserving our position on a financial commitment. We will also avoid any implication that we agree with current eCall timescales and specifications.

Signing would indicate a commitment to implement eCall in the UK by 2010 which we do not believe can be delivered. While we fully support the objective of road casualty reduction, the evidence does not show eCall would bring a significant benefit to the UK in this area. The negative benefit-cost ratio and the potential demands which would be placed on both industry and government mean that there is not currently a business case for implementation. By signing with caveats we would run the risk that our concerns would be underestimated and not fully addressed, as the Commission turned its attention to other Member States who have not yet signed.

Due to a lack of clarity over the technical and functional specifications of the proposed eCall system, I am afraid that it has not been possible to complete a full Impact Assessment. However, the proposal would have a significant impact on Mobile Network Operators and other industry stakeholders (e.g. vehicle manufacturers) as the benefit-cost ratio is poor. By not signing the MoU, we will allow these stakeholders to avoid a potentially high financial commitment. These stakeholders are expected to support this decision, which will give them more time to develop their own positions. We intend to maintain a close dialogue with all stakeholders, and to seek further analysis in order to monitor and review the case of eCall in the UK.

I will be writing to Commissioner Reding this week to outline the UK position and provide a copy of our report.

27 November 2007

Letter from the Chairman to the Rt Hon Rosie Winterton MP

Thank you for your letter dated 27 November. Sub-Committee B considered it at its meeting on 3 December.

Although the Committee agreed to clear both documents (12383/05 and 15932/06) it noted that there has been no indication of how this matter will be progressed following the UK’s decision not to sign the MoU. Therefore, the Committee has decided to clear these documents with the expectation that it will be informed of any future developments on the eCall project.

4 December 2007
EURATOM AND THE INTERNATIONAL ATOMIC ENERGY AGENCY (7609/06)

Letter from the Chairman to Malcolm Wicks MP, Minister of State for Energy, Department for Business, Enterprise and Regulatory Reform

Sub-Committee B has been holding this item under scrutiny since 24 April 2006. In a letter dated 15 June 2006, we requested an update on negotiations and answers to questions posed in an earlier letter, dated 4 May 2006, as soon as they were available. A response was received from the Duty Minister, dated 23 August 2006, stating that the Committee would be kept up-to-date with developments in this area and that it was not yet possible to answer the Committee’s questions. We would appreciate an update on any developments as well as answers to the questions posed on 4 May 2006.

13 November 2007

EURATOM SAFETY AND SECURITY: ACTIVITIES IN 2003 (5377/05)

Letter from the Chairman to Malcolm Wicks MP, Minister of State for Energy, Department for Business, Enterprise and Regulatory Reform

Sub-Committee B has been holding this item under scrutiny since 1 March 2005. We last wrote to you regarding this item on 9 November 2005 and requested an update on the Action Plan, work on which was due to continue during the UK’s presidency. We have not yet received this information and would appreciate an update on the progress of the Action Plan.

13 November 2007

Letter from Malcolm Wicks MP to the Chairman

In response to your letters of 13 November, I am writing to update the Committee on the position of the above dossiers in the Council Working Group on Atomic Questions.

The Committee will recall that the Commission proposed in spring 2006 to enhance the status of Euratom at the IAEA from observer status to full membership. The Commission feels that its observer status limits Euratom’s influence and visibility within IAEA, but recognises that change can only be pursued through negotiation with IAEA resulting in an amendment to IAEA’s statute. The current position is that the ball is in the Commission’s court and there is no sign of movement in the near future. No action is urgently required from UK.

The second issue for update is the ‘Nuclear Package’. No progress has been made on the two revised Commission’s proposals for Council Directives on the safety of nuclear facilities and the safe management of spent fuel and radioactive waste, submitted to the Council in September 2004. All successive Presidencies have refused to re-examine them.

Instead, an Action Plan on Nuclear Safety and the Safe Management of Spent Fuel and Radioactive Waste was set out, based on the Council Conclusions of June 2004. Its Working Party on Nuclear Safety prepared a report at the end of 2006. The main outcome of the report was the suggestion of creating a High Level Group to examine these issues. The High Level Group met for the first time on 12 October, with Mike Weightman, HM Chief Inspector of Nuclear Installations in the UK seat.

The programme of work for the HLG was discussed and it was noted that the Council conclusions identified between 40 and 45 ideas. It was agreed that, within one month, Member States would identify to the Chairman which of these ideas are a priority.

21 November 2007

Letter from the Chairman to Malcolm Wicks MP

Thank you for your letter dated 21 November updating the Committee. Sub-Committee B considered the letter during its meeting on 10 December and decided to keep both dossiers under scrutiny.

The Committee last wrote to the Minister concerning EM 5377/05 on 13 November as it had not received a reply to its previous letter of 9 November 2005. In this letter the Committee requested an update on the Action Plan. The Committee was surprised, therefore, that your recent letter states that the Working Party on Nuclear Safety reported at the end of 2006.

The Committee would appreciate details about the future of the ‘Nuclear Package’ and about the work of the High Level Group, and its conclusions following the meeting on 12 October.

Concerning EM 7609/06, we understand that the negotiations have halted and that further movement is unlikely. If new proposals are put forward at a later date, however, the Committee would expect to be kept informed and new a explanatory memorandum to be presented.

11 December 2007

Letter from Malcom Wicks MP to the Chairman

Thank you for your letter of 11 December 2007.

I am writing to update the Committee on the work of the European High Level Group on Nuclear Safety and Waste Management.

The basic mandate for the High Level Group (HLG) comes from the Council Conclusions of 8 May 2007, as informed by the outcome of the Working Party on Nuclear Safety in 2006, and amplified by the Commission Decision of 17 July 2007 on establishing the HLG. Its purpose is to develop a common understanding, and if appropriate, suggest common approaches in the fields of:

(a) the safety of nuclear installations;

(b) the safety of the management of spent fuel and radioactive waste; and

(c) financing of the decommissioning of nuclear installations and safe management of spent fuel and radioactive waste.

It is anticipated that meetings will be convened twice a year or more frequently as deemed appropriate. To date, there have been two meetings; the first on 12 October 2007 and the second on 11 January 2008. Further meetings are planned for 21 April 2008 and 30 May 2008.

At the meeting of 12 October, the Commission confirmed that the role of the HLG is to report to the Council and European Parliament and advise the Commission. It was also agreed that the basic principle of decision making would be by consensus. The main output of the meeting was to clarify the Group’s mandate and initiate the preparation of a draft Work Programme, Rules of Procedure and Group Priorities (to feed into the Work Programme).

At the meeting of 11 January, the President of the Group was confirmed as Andrej Stritar (Slovenia). Mike Weightman (UK) and Anne McGarry (Ireland) were confirmed as Vice-Presidents. The Group reached consensus on its Rules of Procedure and, in order to fulfil its purpose, to put in place three expert Working Groups:

(a) Working Group 1—Improvements in Safety Requirements and Practices (for nuclear power plants). To address nuclear safety issues and interfaces with the Convention on Nuclear Safety.

(b) Working Group 2—Improvements in Decommissioning and Radioactive Waste and Spent Fuel Management. To address radioactive waste safety and spent fuel management, interfaces with the Joint Convention on Radioactive Waste and Spent Fuel Management, and interfaces with the EU decommissioning funding programme.

(c) Working Group 3—Improvements in Transparency. To address transparency, communications and stakeholder engagement for the HLG, including the sharing of Member States experience in these fields.

Each of the Working Groups will develop its own Terms of Reference and Work Programmes for agreement at the next meeting in Vienna on 21 April 2008.

The HLG has undertaken to submit its first report to the Council and the European Parliament by 17 July 2009, with progress reports at least every three years.

A website will be set up shortly by the Commission on which the HLG will publish documents to assist interested parties in understanding the work of the Group.

I will keep the Committee informed of future developments.

Your letter also asked about the Nuclear Package. The position remains as set out in my letter of 21 November 2007. There have been no further developments.

11 February 2008
Letter from the Chairman to Malcolm Wicks MP

Thank you for your update on the activities of the High Level Group. Your letter was considered by Sub-Committee B at its meeting of 25 February 2008. It was agreed to clear both this dossier (5377/05) and EM 7609/06.

The Committee is grateful for your commitment to continue to provide updates on any developments in the area of nuclear safety and waste management and looks forward to receiving them.

26 February 2008

EURO VI STANDARD FOR HEAVY DUTY VEHICLES (5127/08)

Letter from the Chairman to Jim Fitzpatrick MP, Parliamentary Under Secretary of State, Department for Transport

Thank you for your Explanatory Memorandum on the proposals for a Euro VI standard for heavy duty vehicles. Sub-Committee B considered it at its meeting on 18 February and it was agreed to hold the document under scrutiny.

The Committee noted your concerns regarding the increase in fuel consumption caused by the higher emissions limits and the reliance on technological advances to off-set these. The Committee will be interested to receive further details once an Impact Assessment has been carried out. In particular, the Committee would be grateful if further details could be given to account for the discrepancy between the Government’s fuel consumption estimates and the Commission’s.

The Committee would also appreciate further comment on the methods of both enforcement and in-service measurement of these standards. In cases where a vehicle registered in one Member State is found to be contravening these emissions limits whilst operating in another Member State, how and by whom are these regulations to be enforced? Also, whilst the Committee appreciates the Commission’s commitment to develop suitable technologies to test for in-service compliance, more detail about the procedure and process for ensuring in-service compliance would be appreciated.

The Committee also noted the Government’s statement that fuel consumption of heavy goods vehicles has only improved by around 1% per year for the last 10 years, and that this rate of improvement cannot be guaranteed. The Committee would be interested in the Government’s view on how these proposals link in with other EU initiatives to improve the environmental impact of road vehicles and whether this might affect the estimated increase in CO2 emissions caused by increased fuel consumption.

19 February 2008

EUROPEAN AVIATION SAFETY AGENCY (14895/05, 14903/05)

Letter from Jim Fitzpatrick 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 European Regulation, which would extend the responsibilities of the European Aviation Safety Agency (EASA) to cover flight operations and personnel licensing. The Portuguese Presidency hopes to reach an agreement with the European Parliament in December 2007, following the EP’s plenary second reading.

Since my letter of 11 May 2007,14 the Council reached political agreement on a Common Position at the June Transport Council and the formal Common Position was adopted in October 2007. The Portuguese Presidency started informal discussions with the European Parliament and Commission on the issues where the EP’s opinion differed from the Council’s position in September, updating the Aviation Working Group on the outcome of these discussions.

Following the transmission of the Council’s Common Position to the European Parliament in October, the Presidency have been exploring the possibility of a possible second-reading agreement with the European Parliament. Of the 31 original amendments proposed by the EP in March 2007, the majority of these have either been modified and included in the Common Position, or the EP has indicated that it will withdraw them in the context of an overall agreement with the Council. This includes the proposal to give EASA a role in determining aviation security, which the UK did not support, and the EP’s proposal that EASA should not fund its continuing airworthiness activities from the fees and charges paid by industry to the Agency. There

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are 10 remaining issues that the EP and Council have yet to resolve, two of which are of particular interest to the UK.

The first concerns the possibility in the Common Position text, that general medical practitioners (GMP) should be allowed to act as aero-medical examiners and issue medical certificates for the purpose of the leisure pilot licence, where national law so permits. Some MEPs are unhappy with this proposal and would like the monopoly that aero-medical examiners have over the pilot licensing system in most Member States to be maintained. I would prefer to allow the current situation in the UK to continue, where GPs are allowed to countersign a pilot’s self-declaration of medical fitness to fly provided that the GP has access to the applicant’s past medical records, and will continue to argue for this point.

The second outstanding issue concerns the question of whether cabin crew should be issued with an attestation of initial training, or whether they should be licensed. The EP has proposed that cabin crew should be licensed, and has said that this is the Parliament’s top priority. The Council’s Aviation Working Group has debated the issue on a number of occasions, and is divided on the issue. The UK, together with several other Member States, would prefer not to see a mandatory system of cabin crew licensing, as we do not believe this is justified on safety grounds.

However, there are tactical considerations to take into account here. The Regulation contains important financial provisions that will assist in stabilising EASA’s finances by enabling the Agency to carry over its income from the fees paid for its certification activities from one year to the next. If we do not reach agreement with the EP by the end of the year, EASA will not be able to make use of this provision and its finances will not be as secure as the Government and industry would like. So while I will continue to argue strongly for the points outlined above, I will be prepared to fall back—only if absolutely necessary—to achieve our wider objectives. In this case my aim will be to ensure any cabin crew licensing regime is as light touch as possible.

16 November 2007

EUROPEAN AVIATION SAFETY AGENCY (5020/08)

Letter from the Chairman to Jim Fitzpatrick MP, Parliamentary Under Secretary of State, Department for Transport

Thank you for your Explanatory Memorandum outlining the Commission’s Opinion on the European Parliament’s amendments to the Council’s Common Position. Sub-Committee considered it at its meeting on 4 February.

Although it was agreed to clear the document from scrutiny, the Committee notes the Government’s concerns about the amendments made by the European Parliament. The amended proposal would allow the Commission to impose administrative fines on aviation operators. The Government resisted granting the Commission a similar power in the area of Maritime Classification Societies. The Committee would appreciate further information from the Government on what steps it will take to influence the implementing rules drawn up to govern this power.

The Committee would also appreciate further details on action the Government intends to take concerning the need for all changes to flight time limitation schemes to be approved by the EASA. The Explanatory Memorandum states that this amendment is important but does not outline how the Government intends to proceed.

Furthermore, the Committee would appreciate further information on what actions the Government will be taking to ensure that the implementing rules on the attestation of cabin crew training are evidence-based and proportionate.

Finally, the Committee would be interested to know who will be responsible for reporting contraventions of the regulations to the EASA. In cases where an operator based in one Member State is operating in another, would it be the home or the host Member that would have this responsibility? Also, who is responsible for ensuring that these common rules are consistently applied across the Member States?

3 February 2008
Letter from Jim Fitzpatrick MP to the Chairman

Thank you for your letter of 5 February 2008, requesting more information on the implementing rules that the European Aviation Safety Agency (EASA) will publish in due course on air operations and flight crew licensing.

As a general comment on the procedure for adopting the implementing rules, EASA will be consulting on all the proposed requirements from May 2008. The Department for Transport will be responding to these consultations, informed by technical advice from the Civil Aviation Authority (CAA), and will encourage industry and other stakeholders to respond as well. Following its analysis of consultation responses, EASA will issue a number of legal opinion’s to the European Commission. The Commission will then propose a set of technical regulations to the EASA Committee under comitology procedures. The Committee, on which the UK Government is represented, will meet to negotiate and, in due course, vote on the Regulations. One of the key ways for the Government to influence the implementing rules will therefore be through its formal negotiating role on the EASA Committee.

The new Regulation will enable the Commission, at the Agency’s request, to impose fines on undertakings to which the Agency has issued a certificate, where the implementing rules have been breached. It is important to note that the majority of certificates under the EASA regulatory system are issued by the National Aviation Authorities, not EASA. For example, the CAA will continue to issue the Air Operator’s Certificate for UK airlines under the EASA system. Therefore it is not anticipated that the fines will have a major impact on the UK’s aviation sector. Nevertheless, the Government recognises the importance of this amendment and will engage with the Agency and the Commission in the development of the implementing rules and participate fully in any working groups convened to discuss enforcement matters.

With regard to the requirements governing flight time limitation schemes, EASA has recently commissioned scientific research into the provisions of Subpart Q of Annex III to Regulation 3922/91, known as EU OPS. The CAA will take a keen interest in this research project as it progresses. The Government will encourage EASA to use the latest available scientific and medical evidence to inform its certification specifications. The Government is keen to ensure that the requirements for the attestation of cabin crew training remain proportionate and, together with Ireland and Netherlands, adopted a statement in the Council minutes to this effect. The CAA will request that the Agency sets up a rulemaking group to draw up the requirements on cabin crew at the next meeting of the Advisory Group of National Authorities, which advises the Agency on its rulemaking programme, in March.

The Agency is responsible for ensuring that the rules are applied consistently across Member States. It does this by carrying out standardisation inspections of Member States, with each inspection focusing on a different set of implementing rules. The inspection teams are made up of Agency staff and experts from the National Aviation Authorities. Following the inspection, reports are sent to the individual Member State and the Commission, requesting corrective action where the Member State is found to be in breach of the regulations. If no satisfactory corrective action is taken, the Agency can refer the matter to the Commission, for infringement proceedings. The Regulation provides for a system of collective oversight of operators by Member States. Therefore both the home and host Member States are responsible for sharing information on contraventions to the regulations to EASA.

7 March 2008

EUROPEAN ELECTRONIC COMMUNICATIONS MARKET AUTHORITY (15408/07)

Letter from the Chairman to Stephen Timms MP, Minister of State for Competitiveness, Department for Business, Enterprise and Regulatory Reform

Thank you for your Explanatory Memorandum covering the proposed creation of a new regulatory authority for electronic communications. This Document was considered by Sub-Committee B at its meeting of 14 January and it was decided to hold this document under scrutiny.

The Committee agrees with the Government’s concerns that the argument for a new authority to replace the ERG and ENISA is not conclusive. Whilst the need for more consistent implementation of regulation and greater co-ordination between NRAs is appreciated by the Committee, it does not consider the creation of a “super-regulator” the most appropriate means of achieving these aims. This is an issue that the Committee will be discussing in more detail in its forthcoming report on the Commission’s Review of the Single Market.

The Committee would be grateful if the Minister could provide updates on this matter as it progresses.

16 January 2008
EUROPEAN NETWORK AND INFORMATION SECURITY AGENCY (ENISA):
EXTENSION (16840/07)

Letter from the Chairman to Stephen Timms MP, Minister of State for Competitiveness, Department for Business, Enterprise and Regulatory Reform

Thank you for your Explanatory Memorandum on the proposal to extend the mandate of the ENISA. Subcommittee B considered this document during its meeting of 28 January and decided to clear it from scrutiny. However, the Committee is continuing to hold the proposal to create the European Electronic Communications Market Authority (15408/07) under scrutiny and will take a close interest in developments in this area.

30 January 2008

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

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

Thank you for your letter of 19 June 2007 requesting to be kept informed of progress on the negotiations on the Safety Directive. I am writing to bring you up-to-date with progress on all three documents and to let you know that the Portuguese Presidency is keen that the Council should reach a political agreement on the whole package at the Transport Council of 29–30 November. The Presidency and Commission have been working closely with the European Parliament and a first reading agreement has been reached between the institutions, allowing the reformed rules and procedures to enter into force in the near future.

I am pleased to report that successful discussions at Working Group mean that we have secured a number of improvements to the Interoperability Directive which will benefit the UK rail industry. These include new provisions on Type Approval of Vehicles, which allows for Member States to authorise a ‘type of vehicle’ enabling all further vehicles of the same ‘type’ to be automatically authorised to be placed into service in that Member State. This could help to reduce costs and the administration burden of seeking further approval by UK railway undertakings and manufacturers. We believe that the revised Directive provides a step forward in removing unnecessary protectionist requirements, particularly as the Safety and Interoperability Directives have become more aligned to ensure that checks are kept to a minimum.

The key changes that have been proposed in the Safety Directive are the inclusion of a new provision on a voluntary scheme for the maintenance of vehicles which is valid throughout the Community. This will help to prevent Member States requiring further checks of the maintenance regime for any vehicle that has been certified. We welcome the flexibility of making the scheme voluntary but with mandatory recognition across all Member States. This is important as the term ‘keeper’ covers both freight and ‘passenger services’. The latter already have requirements in their safety management system on maintenance of vehicles. If a keeper does not participate in the scheme then the burden of proof is with them to provide evidence to a railway undertaking or National Safety Authority that their vehicle has been adequately maintained and is safe to operate. The European Railway Agency has been tasked with taking forward the scheme and analysing the relationships between the various players in order to provide the clarity that the sector requires. This is set out in the amended European Railway Agency Regulation which forms part of this package.

To support the maintenance provision there are new definitions of “keeper” and “entity in charge of maintenance” in the Safety Directive. Whilst we were initially sceptical of the need for more than one definition, the Commission argued that two definitions were needed in order to allow for flexibility in the market and this was supported by Member States. The Commission have included a specific recital explaining the types of players that could be included within the definition of keeper. This provides the necessary clarity on who would come within the definition. We have also secured a number of small changes to the Safety Directive which removes unnecessary bureaucratic requirements on the Member States.


Unfortunately this means it will not be possible for the Department to report the outcome of it to your Committee in advance of the Council, however we are confident that the plenary will support the amendments made at Committee stage.

On Interoperability, as mentioned above, the EP and the Council have adopted very similar positions. Following a series of meetings between the representatives of the Council, Parliament and Commission, a text has been agreed that will now be put to the EP Plenary for adoption. This has cross-party support and we have no reason to believe that it will not be adopted. The same text will then be agreed as the Council’s political agreement on 29 and 30 November at the Transport Council.

On Safety and the Agency, the TRAN Committee and Council positions, and that of the Commission, are also very similar. It is unlikely that, on technical proposals such as these, that the EP Plenary will adopt an Opinion that is different, other than minimally, from that of the TRAN Committee.

In the Safety Directive, Member States and the TRAN Committee agree on the most significant amendment to the Commission proposal: transferring Article 14 of the current Safety Directive, and Article 14a of the Commission proposal for a revision, to the Interoperability Directive. This brings together all the main provisions concerning the placing into service of railway vehicles: this example of legislative simplification has been welcomed by the rail industry. Otherwise, the TRAN Committee’s amendments are largely technical rather than political in nature and do not, in most cases, present a serious obstacle to an agreement with Council. Amendments concern, for example: adding “improving the health and safety at work” to the Directive’s objectives; revised definitions of “national safety rules”, “essential requirements” and “keeper”; comitology; roles and responsibilities for vehicle maintenance; and the setting up of a mandatory certification system for keepers of vehicles. This last point is the most at odds with the Council position: Member States support the creation of a certification system for the “entity in charge of maintenance” but consider that it is unnecessary for this to be mandatory. This is to enable flexibility in the market as the provisions cover both freight and passenger vehicles. Whilst the freight sector is supportive of a mandatory scheme, the passenger operators and manufacturers are not. It is likely that this issue will not be included in the political agreement.

The TRAN Committee adopted a relatively small number of amendments to the ERA Regulation proposal. These mainly relate to enhancing the roles of the Agency in relation to providing technical opinions and the management of rules relating to vehicles. These issues have been covered elsewhere in the Interoperability and Safety Directives.

The one which Council had most concerns on was a proposal for the Agency to have a role in the future in issuing authorisations for the placing into service of railway vehicles. Member States and the Commission agree that it is too soon to consider such a step, particularly without any proper analysis of this possibility or any evidence that it would lead to an increase in efficiency or rail safety. This will not therefore be included in the political agreement of the Council and will need to be discussed further with MEPs.

Throughout the negotiations, UK has played an eminent role and is now recognised by the Commission and other Member States not only as a key player on rail interoperability and safety issues but as being at the forefront of efforts to break down the remaining barriers to cross-acceptance of vehicles. Whilst we have not been able to make the strides forward that we and the UK industry would ideally have liked, we are well-placed to work with the Commission, the industry at UK and EU level, and other Member States to press for the completion of this work in the coming years. We also believe that the final proposals are a positive result for the UK.

A copy of the draft Impact Assessment is attached (not printed) and a full and detailed one will be available during the implementation stage, when the department consults open proposals to amend existing legislation.

19 November 2007

EUROPEAN STRATEGIC ENERGY TECHNOLOGY PLAN (15458/07)

Letter from the Chairman to Malcolm Wicks MP, Minister of State for Energy, Department for Business, Enterprise and Regulatory Reform

Thank you for your Explanatory Memorandum on the European Strategic Energy Technology Plan. It was considered by Sub-Committee B during its meeting of 21 January 2008 and was cleared from scrutiny.

The Committee notes the concern of the Welsh Assembly mentioned in the Explanatory Memorandum that the Strategic Energy Plan does not emphasise wave or tidal power. The Committee would be interested to know what steps the Government intends to take to ensure that this concern is addressed in future legislative proposals.

23 January 2008
Letter from Malcolm Wicks MP to the Chairman

Thank you for your letter of 23 January, about the European Strategic Energy Technology (SET) Plan and the Welsh Assembly Government’s concerns.

I am aware that there may seem to be an important omission in the SET Plan. However, its remit was broadly to examine the collaborative measures, which Member States can take to ensure that actions are taken across the EU on a strategic basis, with an aim to addressing the EU targets set for 2020 and beyond.

In doing this, the report focused on existing deployable technologies, e.g. biofuels, onshore and offshore wind, photovoltaic (PV) and other solar power, nuclear fission and energy efficiencies. Unfortunately, the technological and economical viability of large-scale electricity generation from wave and tidal stream sources has not yet been demonstrated by technology developers, and so this was not emphasised.

The SET report did note, that key EU technology challenges for the next 10 years to meet the 2050 vision, include bringing the next generation of renewable energy technologies to market competitiveness, developing the technologies and creating the conditions to enable industry to commercialise them. A key focus of this activity will, most likely, be on the marine energy technologies, which move towards commercial viability and deployment over the next few years. The current draft Council Conclusions on the SET Plan note that there may be a need for further initiatives and encourage the Commission to continue to examine areas with great potential such as marine energy. The UK will ensure that these technologies are fully taken account of in further work at an EU level arising from the SET Plan.

11 March 2008

EU-US AVIATION AGREEMENT (8656/06)

Letter from the Chairman to Jim Fitzpatrick MP, Parliamentary Under Secretary of State, Department for Transport

Sub-Committee B was grateful to receive evidence from DfT officials at its meeting on 10 March, 2008. The Committee intends to pay close attention to the negotiations on this agreement. Its main concerns remain US carrier ownership rules, the Fly America arrangements and cabotage. The Committee would be grateful if the Minister could keep it informed of progress in these three areas.

The Committee would also be grateful if the Minister could make available comparisons of landing charges for the most common types of aircraft at Heathrow, Gatwick, Stansted, Paris and Frankfurt.

12 March 2008

FIRST INTELLIGENT CAR REPORT (13922/07)

Letter from Rt Hon Rosie Winterton MP, Minister of State for Transport, Department for Transport, to the Chairman

You wrote on 30 October 2007 to inform me that Sub-Committee B had cleared the Explanatory Memorandum on the following communication: 13922/07. You also requested assurances that the Government is working with the Commission to ensure the different initiatives are co-ordinated centrally.

The Commission intends to co-ordinate activities through an ITS (Intelligent Transport Systems) deployment plan, the “ITS Roadmap”, which is due to be published in summer 2008. It is now consulting with principal stakeholders, including national governments, in order to develop this roadmap. Representatives from the Commission will shortly be visiting the Department for Transport to identify how we can contribute to the roadmap development and officials will have the opportunity to comment on the documentation.

The final roadmap will form part of a Commission Communication, currently expected to be published in summer 2008.

Your letter also mentioned some related dossiers which were still under consideration by Sub-Committee B. Separate letters have since been sent to the Committee on the eCall project (EMs 12383/05 and 15932/06), the cleaner vehicles directive (EM 5130/06) and the fuel quality directive (EM 6145/07).

12 March 2008

FREE MOVEMENT AND MARKETING OF GOODS WITHIN THE EU (6312/07, 6313/07)

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

Since I wrote to you on 24 October 2007 and the clearance of scrutiny by the committee in June last year, there has been significant progress on the draft text.

As you may recall, the draft Regulation will facilitate the free movement of goods in the internal market by reducing barriers to trade imposed by national technical rules on non-harmonised goods that are lawfully sold elsewhere in the EU. The Commission estimate that the Regulation will result in a 10% increase in trade in the goods covered. A more conservative estimate of an increase of between 1% and 5% would lead to estimated annual benefits to the UK economy of between 0.4 billion and £2.02 billion. SMEs are likely to be the key beneficiaries as they do not have the resources to research up to 26 national legal regimes to find out if there are technical rules that need to be complied with.

The Slovenian Presidency has maintained the Portuguese Presidency’s desire to achieve a first reading agreement. At working groups, we have succeeded in ensuring that our remaining concerns on hallmarking and health and safety were met:

- **Hallmarking**: the proposal maintains Member States’ authority to require that certain products complete prior authorisation procedures that serve public interest objectives (recognised by Community Law) before being placed on the market e.g. precious metals can continue to be hallmarked in the UK so consumers are certain of the fineness of the metal they are purchasing; and

- **Health and Safety**: the proposal ensures that products that are generally prohibited on grounds of public security or public morality can be immediately withdrawn from the market.

The European Parliament completed its first reading of the proposal in February adopting a series of amendments in line with text developed under the Portuguese and Slovenian presidencies, including addressing our concerns. We anticipate that the Regulation will be adopted as a ‘first reading deal’ without substantive change in the near future.

26 March 2008

FREIGHT TRANSPORT (14165/07, 14175/07, 14205/07, 14266/07, 14277/07)

Letter from the Chairman to Jim Fitzpatrick MP, Parliamentary Under Secretary of State, Department for Transport

Thank you for your Explanatory Memoranda dated 15 November 2007 which Sub-Committee B considered at its meeting on 26 November 2007.

We are content to clear these documents from scrutiny. However, we would be grateful if you could clarify the Government’s position with regard to the proposal for increasing the dimensions of road vehicles, referred to in your EM on the Commission’s Communication on the Freight Transport Logistics Action Plan (14266/07).

29 November 2007

Letter from Jim Fitzpatrick MP to the Chairman

Thank you for your letter of 29 November in response to our Explanatory Memorandum (EM) of 15 November, which cleared the document from scrutiny but asked for clarification of the Government’s position with regard to the proposal for increasing the dimensions of road vehicles referred to in the EM.

I welcome your Committee’s interest in vehicle dimensions. Committee members may be aware of an article on “super” lorries in The Times newspaper on 26 November which stated that the Government is considering trials of longer and heavier vehicles. This is not the case. The Government is sceptical of potential use for “super” lorries and has no plans to permit them in the UK. However, we do have a desk study looking at what the combined effects on safety, the environment, and the efficiency of freight transport, including the effects on modes other than road transport, might be if these vehicles were to be permitted. The work should soon be completed and published by the end of February, and will inform the UK position ahead of any Commission proposal.

As stated in the EM, we are concerned about the Commission’s intention to study the options for a review of the Directive on the weights and dimensions of vehicles, and we are not convinced of the need or practicality of any significant increase in road vehicle dimensions. We will therefore endeavour to ensure that the Commission...
undertake a full impact assessment similar in scope to our own study; and, as we know this issue is a concern for several Member States, we will discuss with them how a satisfactory outcome might best be achieved.

17 December 2007

GALILEO AND EUROPEAN SATELLITE RADIO NAVIGATION (13112/07, 13113/07)

Letter from Rt Hon Rosie Winterton MP, Minister of State, Department for Transport, to the Chairman


In your letter, you asked for some reassurance as to the likelihood of success, the robustness of costs estimates, and a strategy for achieving the Government’s objectives. Since I submitted my Explanatory Memorandum, the Government has been working with the Commission and other Member States to pursue the objectives set out in my Memorandum and I am now in a position to update you on these points in advance of the Transport Council on 29–30 November.

In continuing discussions around the cost estimates, the Commission has pointed to evaluations of the figures by independent consultants PriceWaterhouseCoopers and Sateil Conseil International. These estimates have therefore been accepted by the majority of Member States. The Government nevertheless continues to believe that there is a range of uncertainties around these figures, particularly over the potential for optimum bias and the allowance for project risks.

In these circumstances, and given the uncertainties inherent in any estimation process, the Government believes that the key issue is to ensure that the budget for the deployment of Galileo is effectively capped, enforcing effective management, and where necessary trade-offs between costs and requirements, without recourse to further funding requests. In seeking to cap the budget in this way, the Government believes it has the support of the Commission and a majority of Member States and it will therefore continue to push to ensure that this is reflected in the conclusions of the next Transport Council and subsequent work to agree the necessary regulations on Galileo.

The Government has also continued to work with the Commission and our European partners on the development of the overall management structure and on the procurement strategy. In these discussions, there has been widespread support for the principles of ensuring transparency for Member States, clear lines of governance, effective arrangements to avoid conflict between ESA’s dual roles as design authority and procurement agent, and the importance of effective competition to deliver value for money for the Community. We expect therefore to have made progress on all these points by the Transport Council.

You also asked about how a meaningful cost comparison might be made between a public procurement and a PPP when there is no prospect of such a partnership. As you will be aware, the negotiations on a PPP failed for a variety of reasons including continuous unresolved disputes over the share of industrial work and an insufficiently strong and clear public governance. The UK continues to believe that had this aspects been dealt with at an early stage, it should have been possible to resolve the other issues over the technical complexity of the programme and the transfer of design and market risks and that it could therefore be possible to assess the possible costs of a PPP as a benchmark against which to compare other alternatives.

As you know, Galileo is being discussed in ECOFIN as well as in the transport formation of the Council and may also be discussed at the European Council on 13–14 December. And as you may also know, following the recent recommendations from the House of Commons Transport Committee and its European Scrutiny Committee I have arranged for a European Standing Committee debate to be taken on Monday 26 November 2007 at 16.30 to inform the Government’s position before Transport Council.

I will, of course, write to your Committee again following the Council meetings, to keep you informed of the outcome.

23 November 2007

Letter from the Chairman to Rt Hon Rosie Winterton MP

Sub-Committee B considered this matter again at its meeting on 3 December 2007, following the evidence given by officials from the Department for Transport, and has decided to clear it from scrutiny.

4 December 2007

Internal Market (Sub-Committee B)

Letter from Rt Hon Rosie Winterton MP to the Chairman

As you will know from my letter of 23 November on the Galileo programme I attended Transport Council on 29-30 November. I am aware that my officials attended a meeting of Sub-Committee B and gave a short synopsis of the outcomes of Council, but I thought you would also find it helpful if I set out the decisions taken at the Council for you in writing. I will also take the opportunity to give you an indication of the next steps in the programme.

Following the decision taken at the June Council that the Public Private Partnership process had failed and that the negotiations with the prospective concessionaire should be ended, EU Ministers agreed at the October Transport Council that an integrated decision on the Commission’s proposals for the deployment of Galileo through public procurement should be taken by the end of the year, with decisions being taken in the appropriate Council formation.

Subsequently at the Economic and Financial Affairs Council (ECOFIN) on 23 November political agreement was reached on the financing of Galileo. Funding for the programme is to come from a combination of the revision of the multi-annual Financial Perspective (with funds from the unspent margins for agriculture (Heading 2) and administration (Heading 5)) and a re-allocation of the funds from existing programmes within Heading IA (Competitiveness for growth and employment), which includes Galileo.

At this Council the UK, working in close partnership with like-minded Member States, secured a one-third reduction in the proposed size of the multi-annual financial framework revision; and a doubling of the amount re-allocated from existing programmes within Heading IA. A declaration of the European Parliament, the Council and the Commission made a commitment that the 2007–13 multi-annual framework would not be revised subsequently to finance Galileo; recognised that the revision was exceptional and did not set a precedent for future years; and confirmed that procurement of the Galileo work-streams should be open and competitive, thereby encouraging cost discipline while being fair to all commercial interests, including the UK’s.

I am pleased to report that the decisions taken on the Galileo satellite navigation programme at ECOFIN were followed by the agreement of Council Conclusions at Transport Council. The Conclusions define the general principles covering governance and public sector procurement for the programme. Along with identifying the European Commission as the overall programme manager—to be advised by Member States, the Conclusions ensure:

- a ceiling on expenditure within this Financial Perspective of the Commission’s estimate of €3.4 billion;
- a strong role for Member States in overseeing the programme with full access to information on progress on the project;
- robust and fair competition in the programme with multiple simultaneous procurement strands where possible (including satellites) to deliver value for money;
- independent review of progress by project experts.

The roles of the GNSS Supervisory Authority (GSA) and the European Space Agency (ESA) were also identified, along with the arrangements for oversight of the security of the system.

In addition I tabled a minutes statement which stressed the need for:

- review by independent experts at key decision points including when finalising the contract between the Commission and the European Space Agency for the procurement of the system, at the end of the current In Orbit Validation Phase (in 2010) and once quotes have been received from industry for the deployment phase;
- regular review of costs, risks and likely revenues from the services to be offered by Galileo.

As you will know, our concern, with the support of Parliament, has always been to ensure that the project delivers value for money for the Community by controlling costs and risk and pursuing sound project and financial disciplines. I believe that the outcomes of both Councils are in line with these objectives and meet the commitments we have given to Parliament.

It is expected that the decisions taken at ECOFIN and at Transport Council will be endorsed at the forthcoming European Council on 13-14 December. Further discussion at official level on the draft regulations to implement the Transport Council decisions will then take place before the regulations are brought forward for adoption next year.

10 December 2007
Letter from the Chairman to Rt Hon Rosie Winterton MP

Thank you for your letter dated 10 December updating the Committee on the Transport Council conclusions concerning the Galileo project.

Although Sub-Committee B has cleared the relevant documents from scrutiny, members would appreciate confirmation of what sum has been allocated, within the total budget for the project, to account for write-off of any existing or unsuccessful systems that may be replaced. Officials from your department have confirmed that the €3.4 billion budget for the deployment phase does not include such costs. The Committee would be interested, however, to learn if consideration has been given to this issue, and if so what estimates have been made.

11 December 2007

Letter from Rt Hon Rosie Winterton MP to the Chairman

I am writing to update you on progress on concluding the regulation on the implementation of the European satellite radio navigation programmes in the light of the decisions taken at last November’s Transport Council and to inform you of the outstanding areas of debate on which I may have to take decisions at the forthcoming Transport Council on 7 April. The draft regulation itself was the subject of EM 13113/07, which cleared scrutiny in your Committee following evidence given by my officials to Sub-Committee B on 3 December 2007.

As I reported to the House on 6 December 2007 and set out in my letter to you of 10 December, last November’s Transport Council secured a comprehensive agreement (including funding) on how to take the Galileo programme forward in the period covered by the current financial perspective to 2013. The terms of the agreement were set out in the November Transport Council Conclusions and were endorsed by the European Council on 13–14 December. Since then the UK has been working with the Presidency, the Commission and other Member States to develop the draft regulation, previously submitted to scrutiny, to ensure that it fully implements the detail of the agreement reached in November.

The Commission is keen to ensure the swift implementation of the regulation because of the consequences for costs and revenues of further delay to the programmes. As the regulation is subject to co-decision, the process to adopt it incorporates a fast-track procedure by which discussions between Member States and the Commission have been taken forward simultaneously with those between the Presidency, the Commission, and the European Parliament. We have been working intensively to ensure that the agreement reached at the last Transport Council—with which the UK was satisfied—is implemented in full in the regulation. In particular, in line with my commitments to Parliament, we have been pushing to ensure robust measures for the control of costs, the implementation of sound project management principles, a fair and competitive playing field for suppliers, and recognition of the system’s civilian status. I am happy to be able to report to your Committee that I believe the current text of the regulation meets the UK objectives in all of these areas.

A number of issues remain, however, under negotiation, as set out below, and it is possible that some of these will have to be resolved in discussions at the Council itself.

Involvement of the European Parliament

The draft regulation provides for the creation of a comitology committee (‘GNSS Programmes Committee’) to assist and oversee the Commission’s actions in key areas. The comitology committee will operate mainly by the ‘management’ procedure, but by the ‘regulatory’ procedure for the definition of security requirements.

By contrast, the European Parliament has suggested that the committee should operate by the ‘regulatory procedure with scrutiny’, which would give them a seat on that committee and as a result of the more onerous nature of that procedure, lengthen the process.

While we agree that the Parliament needs to receive full, accurate and timely information to provide oversight of the programme and fulfil its obligations as an arm of the budgetary authority, we, and all other Member States, do not believe this requires them to have a seat on the GNSS Programmes Committee. It will add institutional imbalance by giving the Parliament powers that the Council does not have. Furthermore, our legal advice is that the circumstances in which Parliament may be represented in comitology proceedings are quite specific, and exclude many of the issues likely to be discussed in this forum.

The European Parliament has also asked for an Interinstitutional Monitoring Group to monitor the programme and its financing. Discussions have therefore concentrated on the concept of a consultative or information-sharing group consisting of the Commission, the Presidency and Parliament that would meet at regular intervals—a possible compromise for meeting the European Parliament’s desire for regular
information. While the precise format of this group is not yet clear, the Government is more favourably disposed to the idea of a forum that shares information without disrupting implementation by confusing lines of governance.

**The Role of the GSA**

The European GNSS Supervisory Authority (GSA) was created as an arms-length body to own Galileo on behalf of the Community and be responsible for regulating and overseeing it. It supplies technical expertise and a source of excellence to support the development and future operation of the system. Member States are represented on an Administrative Board that oversees the Agency’s operation.

The role and scope of the GSA came into question with the collapse of the PPP and subsequent lack of purpose for a regulator. The UK and other Member States have welcomed the way the GSA has maintained a commercial emphasis in the programme, in EGNOS as well as in Galileo, and we fully support a continuation of this approach.

The organisation has a good track record in improving transparency by producing frank assessments of the programme that aid effective decision making, and it has an understanding of essential governance features such as sound programme management and traceability.

There are also benefits (including accountability, the maintenance of budgets and targets and a clear delivery responsibility) in having an arm’s length agency acting within set boundaries.

European Parliament’s initial view was that the GSA should be abolished, in line with its concerns about Agencies and their value for money in general. This has modified somewhat with acknowledgement that the GSA might have a role to play in technical aspects of security. Member States initial support for maintaining it is wavering in the face of this and the Commission’s desire to have a greater control over the GSA. If we are unable to retain the organisation in the face of this opposition then we shall attempt instead to incorporate as many of its advantages as possible into the overall mandate provided to the Commission as programme manager.

**Procurement Structure: Sub-contracting**

Questions about the most effective procurement structure formed an important part of Council negotiations, and this remains a matter of concern for many Member States. One area of particular controversy has been the regulation’s treatment of subcontracting. Transport Council called for the industrial supply chain of each work package to include 40% of subcontracting by aggregate value. However, the commercial structures of the space sector preclude the achievement of this figure in at least one work package; the regulation therefore describes a route by which the Commission may request from the comitology committee a derogation from the target in an individual area. The expectation is that this will only occur where the Commission is able to demonstrate that the industrial landscape is such that the programme has no other way of proceeding. Most Member States and the Commission are content with the current amendments to the text, but certain Member States want to make the 40% a target only, and to limit the scope of the application of transparent and competitive procurement requirements. We will continue to resist such a change.

**Next Steps**

The timetable envisaged for agreeing this regulation assumes that the European Parliament’s ITRE committee confirms their final position on 27 March; the Transport Council reaches a general approach on the regulation on 7 April, and the European Parliament agrees to the text during a plenary session in May. This is a challenging timetable and I regret that the continuing negotiations on the final text of the regulation means that I will be unable to give you a report on the outcome in advance of the Transport Council. However, given the success we have already achieved in ensuring the draft regulation reflects UK priorities from the November Transport Council Conclusions, and my expectation of a satisfactory outcome for the UK on the remaining issues, outlined above, I expect to be able to indicate that the UK is in favour of the emerging text at Transport Council. I will, of course, keep you informed of the final outcome of the Council discussions and the European Parliament’s consideration at Plenary.

14 March 2008
INTERNAL MARKET (SUB-COMMITTEE B) 77

Letter from the Chairman to the Rt Hon Rosie Winterton MP

Thank you for your letter dated 14 March 2008 updating the Committee on the final negotiations prior to the Transport Council on 7 April. Sub-Committee B has already cleared this item from scrutiny, but members are grateful for your continued updates. We look forward to receiving further information on the outcomes of the Council meeting.

1 April 2008

INTEGRATED MARITIME POLICY FOR THE EUROPEAN UNION (14631/07)

Letter from the Chairman to Jim Fitzpatrick MP, Parliamentary Under Secretary of State, Department for Transport

Thank you for the Explanatory Memorandum on “An Integrated Maritime Policy for the European Union”. It was considered by Sub-Committee B during its meeting of 21 January. The Committee decided to clear the document from scrutiny.

The Committee intends to take a close interest in any legislative proposals that result from the proposed Action Plan. We question the need for extensive EU-level legislation in this area as much of the maritime industry is already regulated at an international level.

We would also be concerned if legislation resulting from this document did not take adequate account of smaller companies involved in the maritime sector. The Committee was pleased to note that the UK’s regulations on boatmasters’ licensing will now take smaller boat operators’ needs into account. Will the Government be working to ensure that similar flexibility will be incorporated into any integrated EU maritime policies?

25 January 2008

Letter from Jim Fitzpatrick MP to the Chairman


I welcome the Committee’s intention to take a close interest in any legislative proposals engendered by the Commission’s Action Plan. The concept of an integrated approach to policy making is ostensibly welcome, but it will be important to ensure that individual proposals for legislation are driven by real, rather than putative, needs.

The Government believes that any proposals arising from the new policy package must add value to existing international, EU and national measures, respect the principle of subsidiarity, maintain the competitiveness of the EU Member States in global markets and be underpinned by eco-system based management, which is important for the sustainable use of marine resources. We shall press for individual proposals to be accompanied by a sound business case, and shall be mindful of the need for any impact on smaller enterprises to be properly taken into account.

3 March 2008

INTERMODAL LOADING UNITS (9265/04)

Letter from the Chairman to Rt Hon Rosie Winterton MP, Minister of State for Transport, Department for Transport

Sub-Committee B has been holding this item under scrutiny since 8 June 2004. In a letter dated 18 July 2005 your predecessor, Stephen Ladyman MP, wrote to us reporting that the proposal appeared to lack sufficient support from Member States, but had not been formally withdrawn. We would appreciate a further update, outlining the current status of the proposal. Furthermore, we would like your reassurance that if this proposal is revived or replaced with a new proposal, a new EM would be deposited.

13 November 2007

Letter from Jim Fitzpatrick MP, Parliamentary Under Secretary of State, Department for Transport, to the Chairman

I am writing to update you on the current status of the above proposal as requested in your letter of 13 November 2007.

As you may know from the previous correspondence on this dossier, the proposal was effectively withdrawn from the Council Working Group negotiations in November 2004 under the Dutch Presidency due to a lack of support from Member States. Like the Government, other Member States also had doubts as to whether the proposal was the most appropriate way to achieve harmonised standards and whether acceptance by industry could be obtained. Member States also took the view that the standardisation of units already appears to be happening on industry’s own initiative and should be market driven.

In EM 14266/07 on the Freight Transport Logistics Action Plan, we noted that the Commission were proposing to update the ILU proposal to technical progress. However we now understand that the Commission is re-considering this position, although no decision has yet been taken on how it will proceed. Please accept my assurance that if the Commission does to decide to revive the original proposal or bring forward a revised one, the Government will submit a new EM to the Scrutiny Committees for consideration.

7 January 2008

Letter from the Chairman to Jim Fitzpatrick MP

Thank you for your letter dated 7 January giving the Committee assurances that a new Explanatory Memorandum will be submitted if this proposal is revived. Sub-Committee B considered this at its meeting of 14 January and decided to clear the document from scrutiny.

15 January 2008

INTERNATIONAL MARITIME ORGANISATION (IMO) (7826/02)

Letter from Jim Fitzpatrick MP, Parliamentary Under Secretary of State, Department for Transport, to the Chairman

It has been some time now since the EM on the above proposal was submitted in 2002. As reported then and subsequently, there has been no support amongst Member States for Community accession to these organisations. It has, however, never been withdrawn.

We understand that the Commission is still interested in the possibility of pursuing the IMO proposal. The Government view continues to be that we see no obvious benefit in terms of handling Community business in the IMO by changing the Commission’s current observer status to that of Community membership. The European Commission has had observer status at the IMO as an Inter-Governmental Organisation (IGO), since an exchange of letters between the 2 parties in 1974, which was approved by IMO Council and Assembly. As a matter of EC law the Commission entered into the Exchange on the basis of what is now Article 302 TEC. The current arrangements work well and therefore the Government, supported by Member States, remains opposed to European Commission aspirations for Community membership of the IMO.

On ICAO, we have had no indication that the Commission is likely to reopen the matter in the near future. Instead, as agreed with Member States, the Commission has taken steps to strengthen its role in co-ordinating European inputs to discussions in ICAO. As well as co-ordinating the line to be taken by individual Member States in advance in Council Working Group in Brussels, the Commission now has a permanent representative in Montreal who facilitates co-ordination of the European view on the spot and who himself seeks Observer status on a case by case basis where discussions touch on particular matters of Community competence. The Government considers that this level of co-ordinating activity by the Commission is justified by the advantages to be gained from having Europe speak with one voice in this important international forum.

There is still no indication that any forthcoming Presidency intends to take the proposal forward, and I am afraid it remains unclear whether the Commission will attempt either to revive it or replace it with a new document. Should this happen we would, of course, submit a new EM.

7 November 2007
INTERNAL MARKET (SUB-COMMITTEE B) 79

JOINT TECHNOLOGY INITIATIVE (JTI) (10149/07)

Letter from Ian Pearson MP, Minister of State for Science and Innovation, Department for Innovation, Universities and Skills, to the Chairman

Thank you for your letter dated 10 October requesting an update on the negotiations on ENIAC and ARTEMIS, in particular with reference to the exact level of domestic funding required, the relationship to voting rights and the Government’s position once these issues have been agreed. You also asked for clarification on the implications for intellectual property rights.

The Government intends to participate as founder members of the Joint Undertakings for these Joint Technology Initiatives (JTls). There is no cost associated with the UK joining the ARTEMIS and ENIAC Joint Undertakings (JUs) as a founder member and participation as a founder member would provide the UK with the opportunity to influence their shape and direction. Particularly as for the first year voting on the Governing Board is not linked to financial contributions.

On the issue of the UK’s concerns on the proposed governance and voting structures, Member States participating in ARTEMIS and/or ENIAC have equal voting rights on the Governing Board during the first years of the Joint Undertakings when all the key decisions will be made. This will help ensure effective governance of Community funds. We have secured observer status for all Member States on the Public Authorities Board (PAB) which will ensure national representation for project participants when the relative merits of projects are being discussed. In addition, we have obtained more explicit references to the overarching principles of excellence and competition in the selection of projects, there is now direct reference for the need to involve SMEs (as the majority of UK players are), and governance of the JUs has been strengthened by the inclusion of an internal audit requirement.

There is no legal requirement for Member States that join Artemis to provide funding, although there will be peer pressure to do so and there are incentives through the voting weights. Any funding from the UK to support projects will come from the independent, business-led Technology Strategy Board, established in July this year, or from the Research Councils, most likely the Engineering and Physical Sciences Research Council (EPSRC). The Technology Strategy Board accepts the economic justification for the ARTEMIS JU and there is good alignment between the ARTEMIS technology priorities and the UK’s technology priorities with two of the current Technology Strategy Board technology themes mapping directly to ARTEMIS priorities. The funding resource implication for the Technology Strategy Board is currently under consideration.

There is UK interest in ENIAC with strengths in relevant Design Tools and systems solutions and UK Universities and a small number of companies are willing to engage but this is less of a strategic priority for funding, compared to ARTEMIS, and any UK contribution is likely to be smaller. The EPSRC has indicated that it may be able to direct modest resources (less than £1 million) for UK Universities’ collaboration.

On the issue of the implications for intellectual property rights (IPR), the JTI Articles instruct that IPR Rules are developed in line with FP7 Community Framework Rules of Participation. For ARTEMIS and ENIAC, the Statutes provide for intellectual property (IP) ownership both by the JTI itself and project participants; the JTI may own the IP created with its resources and also project participants may own the IP they create.

A general approach on the four proposed JTls for ARTEMIS, ENIAC, Innovative Medicines (IMI) and Aeronautics and Air Transport (Clean Sky) is expected at the Competitiveness Council on 22–23 November and the adoption of the European Parliament’s opinion on the proposals is expected in December. A key priority for the UK is the launch of the four JTls by early 2008.

12 November 2007

JOINT TECHNOLOGY INITIATIVE (JTI) ON AERONAUTICS AND AIR TRANSPORT (CLEAN SKY) (10148/07)

Letter from Ian Pearson MP, Minister of State for Science and Innovation, Department for Innovation, Universities and Skills, to the Chairman

Thank you for your letter dated 10 October requesting detail on the selection criteria for membership, whether as leaders or associates of the Clean Sky Joint Technology Initiative (JTI). You also asked for clarification on the implications for intellectual property rights.

UK companies, initially disadvantaged in the early partner selection process, are now content that a way ahead has been agreed for them to participate in the JTI. We have strengthened the European Commission in its safeguarding of public interest in the JTI, including in the selection processes, so that the JTI can operate in a more open and transparent way. This is now embodied in the Articles and Statutes for Clean Sky.

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21 Correspondence with Ministers, 11th Report of Session 2008–09, HL Paper 92, p 52.
On the issue of the implications for intellectual property rights (IPR), the JTI Articles instruct that IPR Rules are developed in line with FP7 Community Framework Rules of Participation. For Clean Sky, the Statutes provide that the entity creating the intellectual property owns it and also for joint ownership if individual contributions cannot be ascertained.

A general approach on the four proposed JTIs for ARTEMIS, ENIAC, Innovative Medicines (IMI) and Aeronautics and Air Transport (Clean Sky) is expected at the Competitiveness Council on 22–23 November and the adoption of the European Parliament’s opinion on the proposals is expected in December. A key priority for the UK is the launch of the four JTIs by early 2008.

13 November 2007

LEAD MARKET INITIATIVE (5121/08)

Letter from the Chairman to Baroness Vadera, Minister for Business and Competitiveness, Department for Business, Enterprise and Regulatory Reform

Thank you for your Explanatory Memorandum on the Lead Market Initiative. It was considered by Sub-Committee B during its meeting on 10 March 2008. It was agreed to hold this dossier under scrutiny.

The Committee noted the figures stated in the EM for the expected increase in the size of the renewable energy market in the UK. These figures suggest that the UK is expecting much more significant growth in this area than the Commission is expecting for the EU as a whole.

The Committee also raised concerns about the possible implications for public finances of this initiative. Although the EM states that the proposals would not include changes to existing state aid rules, the Communication makes reference to the reorientation of National or Regional State aid schemes”. The Committee would appreciate clarification on what such reorientation might entail.

The Committee is due to taken evidence on the EU’s renewable energy target from BERR officials at its next meeting, 17 March. The Committee would be grateful if these concerns could be addressed during this meeting.

12 March 2008

LIABILITY OF CARRIERS OF PASSENGERS BY SEA AND INLAND WATERWAY IN THE EVENT OF ACCIDENTS (6827/06)

Letter from the Chairman to Rt Hon Rosie Winterton MP, Minister of State for Transport, Department for Transport

Sub-Committee B has been holding this item under scrutiny since 30 March 2006. We last wrote to the then Minister, Stephen Ladyman MP, regarding this proposal on 25 April 200622 and requested news of any significant developments in negotiations. We would appreciate an update on negotiations, along with the supplementary Explanatory Memorandum and a Regulatory Impact Assessment that we are also anticipating.

13 November 2007

MARTIME ACTIVITIES (5912/06)

Letter from Jim Fitzpatrick MP, Parliamentary Under Secretary of State, Department for Transport, to the Chairman

I am writing to notify you of the outcome of the European Parliament’s first reading of the proposed recasting of the directive on common rules and standards for ship inspection and survey organisations and to update you on progress in negotiations ahead of this month’s Transport Council.

The proposed Directive was the subject of Explanatory Memorandum (EM) 5912/06 dated 16 February 2006. Sub-Committee B considered this EM on 6 March and 19 April 2006, noted that it was unlikely that negotiations would commence under the Finnish or German Presidencies, and decided to maintain scrutiny pending further developments on the proposal.

Although Working Group discussion of this proposal only began in July 2007 under the Portuguese Presidency, the European Parliament has completed its first reading and agreed 65 amendments to the proposal. These amendments seek to:

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— reduce the maximum financial penalty for a failing Recognised Organisation (RO) from 10% to 5% of annual turnover;
— introduce comitology procedures into the process of refusing recognition;
— enable a lower fine to be imposed than presently possible in cases where the lower figure has been determined by a judgement or settlement;
— provide flexibility for ROs to mutually recognise class certificates issued by other ROs; and
— modify the Commission’s idea of a “joint body” to oversee the quality of ROs with the creation of a new “Assessment Committee” with more independence than envisaged in the Commission’s proposal.

As outlined in EM 5912/06, the Government supports the intention of increasing the transparency of ROs and the proposed new graduated penalty scheme. The recasting of the class-related Directives into a single updated Directive will also make the legislation much easier to follow and the Government supports this proposal as a good example of better regulation.

The Government welcomes the constructive and, generally, helpful approach adopted by the European Parliament on this Directive and supports many of its amendments. The Parliament agreed:
— the principle of introducing a graduate scale of penalties for a failing RO, but agreed to reduce the Commission’s proposal for a maximum penalty for poor performance by an RO from 10% to 5% of the annual turnover of the maritime component of the RO’s business;
— a more flexible approach to mutual recognition of certificates issued by the ROs; and
— a revised version of the proposal for an independent “Assessment Committee” aimed at improving the overall performance and standards of the ROs. The ROs were concerned about the formation of this body as set out in the Commission’s original proposal, but after significant lobbying of the Parliament they have accepted that the revised text offers a suitable compromise.

The Government acknowledges that these issues are considered by the ROs as important and has therefore been active in seeking to persuade the Council to accept changes to the Commission proposal along the lines indicated by the European Parliament. Following the initial discussions in July and three further Working Group meetings in October, we are pleased to report that the Council is supporting:
— the reduction in the level of fines from 10% to 5%. The Government supports the principle of introducing a fine-based system for failing ROs since the current legislation allows only for an RO to be recognised or not. We consider that 50% of annual maritime-related turnover is more appropriate than the 10% suggested by the Commission. There would be significant disruption to maritime business if a large RO was suddenly derecognised and such action could be only taken as a last resort. By contrast, the introduction of a fine-based system offers an intermediate option which could be used—we think very rarely in practice—to send a message to a poor performing RO that it needs to raise its game or face further fines or even derecognition;
— significant changes to Article 20 to reflect a more flexible mutual recognition process which takes account of both the interests and concerns of the equipment manufacturers and the ROs. The new version of the article will enable ROs to determine in which circumstances it is appropriate to mutually recognise a certificate issued by a different RO so meeting its primary concern. The equipment manufacturers, meanwhile, benefit from the creation of mutual recognition of RO certificates and from a safeguard clause which says that the Commission will monitor the progress of mutual recognition and could come forward with further proposals if the ROs do not make sufficient efforts to establish mutual recognition; and
— the need for an independent assessment system or body to certify the ROs along the lines set out by the European Parliament. Member States have held a number of discussions with the ROs and the International Association of Classification Societies regarding this proposed body. The Council accepts that there is a need for the quality oversight of the ROs and the certification of their management systems. The ROs are prepared to set up the required system or body and to meet the remaining RO concerns the Council is seeking further refinements to Article 21 including minimising yet further the role of the European Commission, and providing more time for the system/body to be established.

The Presidency is keen to secure political agreement on the proposal at the Transport Council later this month, and has scheduled more time to conclude the discussions on the text. There are two key outstanding issues. The first is to finalise the text of Article 21 the proposed new body or system. We do not envisage any difficulties with reaching a satisfactory conclusion on this point. The second outstanding issue relates to who can impose
a fine on a failing RO as set out in Article 12. The Commission would like to carry out this task without the need for comitology, but the UK and other Member States have said that this task should be for the Member States to carry out. We expect that the Council will agree a satisfactory compromise that enables the Commission to impose a fine but only after the support of the Member States through the use of comitology. Given the progress which has been made on this proposal and that the UK’s concerns have now largely been met, the Government is satisfied that it should be supported—providing that, as expected, we get a satisfactory resolution to the text of Articles 12 and 21—and that it will make a useful contribution to ensuring improvements in the performance of the ROs.

7 November 2007

Letter from the Chairman to Jim Fitzpatrick MP

Thank you for your letter updating Sub-Committee B on the progress of this proposal. The issue was considered by the Sub-Committee at its meeting on 19 November 2007 and it was decided to continue to hold it under scrutiny.

In your letter you refer to two outstanding issues, namely the text of Article 21 for the establishment of a new oversight body or system and of Article 12 concerning the arrangements for imposing fines. The Sub-Committee would appreciate being kept up to date on the progress of these issues.

During the course of the Sub-Committee’s discussions on this document the issue of the compatibility of classifications between the EU and third countries was raised. The Sub-Committee would appreciate your comments on this matter.

21 November 2007

Letter from Jim Fitzpatrick MP to the Chairman

Further to my letter of 7 November I am writing to update you on progress in negotiations on the proposed recasting of the directive on common rules and standards for ship inspection and survey organisations ahead of next week’s Transport Council.

My letter was considered by Sub-Committee B on 20 November and further advice was requested on two outstanding issues that I mentioned concerning the texts of articles 12 and 21, and also on the compatibility of the European Recognised Organisation (ROs) with third countries.

Article 12

Article 12 includes a provision to introduce a maximum financial penalty for a failing RO of 5% of the annual maritime-related turnover. As I set out in my letter of 7 November, the Government supports the establishment of a financial penalty regime, since the present arrangements allow only for recognition or derecognition. This is not an effective regime because derecognition of a large RO could only be done as a last resort. If the derecognition was done without suitable safeguards being in place, ships classed by that RO would be stranded in port until they had been classed by another RO or they had flagged out of the EU. The establishment of the proposed financial penalty system will provide a useful intermediate measure to address poor performance by an RO and it has widespread support from the Member States and the Commission. Moreover, the Government supports the principle of giving the Commission the necessary powers as this will create a uniform process operating to a common EU standard. There is a difficulty with the proposal; not with the principle but how to frame the power in the legislation.

Since I wrote to you, this issue has been discussed further and a solution seems likely. The Government’s key concern is to ensure that the Commission can only exercise the fine-making power through comitology. Although the Commission is reluctant to accept this, the Member States are firmly of the view that comitology should be used. The Government is therefore confident that comitology will be included in the process, although it is possible that the fine tuning of the drafting may need to be done during the second reading. Providing that comitology is, as expected, included in the financial-penalty system, the Government intends to support the proposal.

Article 21

In my letter of 7 November, I explained that Member States, including the UK, had held discussions with the ROs and the International Association of Classification Societies regarding the proposed new body to oversee the performance of the EU ROs. Despite some reservations about the proposed new body, UK officials have worked with their colleagues in other States and with the ROs to develop a revised proposal which we think
is now acceptable and which adds real value. This revised proposal requires the ROs to establish a new “quality assessment and certification system” (QACS) with clear objectives whilst, importantly, minimising the role of the Commission within it. The ROs have indicated their support for the new “QACS” and the Government expects that the Council will endorse the revised proposal.

Compatibility of EU ROs with third countries
The EU ROs are large well-established classification societies with a worldwide presence. Their performance is under the close scrutiny of the Commission and the Member States within the provisions of the relevant EU legislation. However, there are concerns related to the performance of the 48 classification societies across the world which are not EU ROs. Some of these societies are small and they are not subject to the same rigorous Member State and Commission oversight as the EU ROs. The Commission, supported by a number of Member States (including the UK) and some of the big EU ROs, consider there is a need to raise the overall standard of the classification societies across the world. To do this needs an international solution at the International Maritime Organization (IMO). There is, therefore, a proposal to include a recital in this proposed Directive, requiring the Member States and the Community to promote the development by the IMO of an international code for class societies.

22 November 2007

Letter from the Chairman to Jim Fitzpatrick MP
Thank you for your letter updating the Committee on the outstanding matters concerning Maritime Classification Societies. Sub-Committee B considered the letter at its meeting on 26 November and decided to continue to hold the proposal under scrutiny.

The Committee appreciated that the Government expects the amendments to articles 12 and 21 to be supported and would be grateful for an update at the appropriate time on whether this has, in fact, been the case.

28 November 2007

Letter from Jim Fitzpatrick MP to the Chairman
Further to my letters of 7 and 21 November I am writing to update you on the outcome of the negotiations at the Transport Council on the proposed recasting of the directive on common rules and standards for ship inspection and survey organisations.

As I set out in my letters of 7 November and 21 November, one of the key outstanding points was the mechanism for the levying fines on a failing Recognised Organisation (RO). On 28 November the Presidency introduced a proposition to separate the instrument into a Directive and Regulation so as to overcome the legal concerns of Member States over the inclusion of a fine-making power in the proposed Directive. The split is essentially that the principal new aspects of the proposal are covered in the Regulation, which includes the fine-making powers, mutual recognition of certificates, and the establishment of the proposed new Quality Assessment and Certification System (QACS), whilst the Directive is limited to the existing scope of the four extant directives. The UK supported the proposed split since it avoided the difficulty of providing the Commission with powers to levy a fine in a Directive which would then need to be transposed into UK law reflecting those powers.

I would like to assure the Committee that the split of the proposal into both a Directive and a Regulation does not affect its substance or scope. It simply clarifies the legislative system for the European ROs and should make it easier for both the Member States and the ROs to fulfil their obligations under the two legal instruments.

As I discussed in both of my letters, one of the UK’s concerns was that the Commission should only be able to exercise its fine-making powers though comitology, so that Member States would have a say in the fine-issuing process. I am pleased, therefore, to report that despite the reluctance of both the Commission and the Presidency to include comitology in the fine-making process, we were successful in securing the use of comitology in the text of the political agreement.

The other main UK concerns were that the substance of the articles on mutual recognition of the certificates issued by the ROs and on the proposed new QACS should be unchanged. Again, I am pleased to report that there were no substantive changes to the text of either article.
It is expected that discussions with the European Parliament to secure a second reading deal on the class proposal will commence in spring 2008 under the Slovenian Presidency.

6 December 2007

Letter from the Chairman to Jim Fitzpatrick MP

Thank you for your letter dated 6 January updating the Committee on the Council negotiations on proposed common rules for ship inspection and survey organisations. Sub-Committee B considered this at its meeting of 14 January and decided to clear the document from scrutiny.

15 January 2008

MARKETING OF PRODUCTS (6377/07, 6378/07)

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

I have taken over lead responsibility for these dossiers, although Ian Pearson at the Department of Innovation Universities and Skills has the policy responsibility for Accreditation and certain other areas. You were in correspondence about the dossiers with Malcolm Wicks last year and I should like to give you a brief progress report on the negotiations on the Proposals in Brussels as requested in your letter of 13 June 2007 to Malcolm. I should also like to give you our Response to the Public Consultation on the Proposals together with a Partial Impact Assessment on the Regulation Proposal (not printed).

Regarding the negotiations in Brussels, we consider that good progress has been made in the Technical Harmonisation Council Working Party on the Proposals under the German and Portuguese Presidencies. During 2007, it became apparent that there were significant differences of approach between the Commission and the Council on one side and the European Parliament’s (EP) Internal Market and Consumer Affairs Committee (IMCO) on the other. Following the 27 November vote in IMCO to prepare a list of Amendments for the Parliamentary Plenary Vote scheduled for February, it has become apparent that much progress has been made in reducing those differences. I shall be reporting to you on the Amendments in the customary way—in respect of Border Controls at least—we can argue the merits of the EP’s Proposals in the Council Working Party. We are cautiously optimistic that in all except one or two important areas (on which I report below) good outcomes can be achieved on First Reading.

Before turning to our principal remaining concerns, I should first mention a point that I know has been of concern to you. Like many interested parties, we should have welcomed it if the market surveillance provisions of the Regulation Proposal had been based on what is usually referred to as a “Positive List” rather than simply rely on the list of specific exclusions in Article 13(3) of the Proposal. In other words, we wanted the Commission to list (either in the measure itself or in a reference document) all the pieces of European product harmonization legislation to which the measure applies. We have now reluctantly accepted the Commission’s argument that, while the lead Directorate General (DG Enterprise & Industry) could do that in regards to its own areas of responsibility, no reliable Commission-wide Positive List can be produced—at least as the two measures are presently scoped. We do, however, regard the potential benefits of the measures as substantially outweighing this shortcoming—particularly in regard to Accreditation policy—and we are prepared to work within the broad legislative approach being proposed by the Commission.

It remains our priority that the envisaged European legal framework for Accreditation (now within DIUS’ policy remit) should be scoped by reference to the relevant international standards and other relevant considerations. It should be based on the principle of non-competition in the EU with one National Accreditation Body per Member State and that principle should embrace both the regulatory and voluntary (business to business) sectors of Accreditation. The EP has not yet formally accepted that the voluntary area should be within scope on this basis. Nevertheless, the mood in the European institutions seems to be such that we anticipate that good progress will be forthcoming.

The remaining major unresolved point is in regard to how the enforcement provisions of different pieces of European product-based legislation should relate to each other. The European Parliament is advocating the use of a complex legal principle, *lex specialis*, under which, where two or more pieces of legislation address the same product compliance issue, the more (or most) specific one will apply. The Commission and the Member States consider this could cause complexity and uncertainty in practice. Nevertheless, we believe that the EP

is trying to address a genuine concern to ensure that market surveillance practitioners (enforcement authorities) have the full range of means available to them to ensure compliance. Such flexibility should help to take forward both the safety and better regulation policy agendas.

The Commission has in recent days, in effect, decided to concede to the European Parliament on this point. The UK’s response has been to counsel caution to analyse the implications. The Presidency and the Commission are, however, keen to secure a First Reading Agreement with the Parliament, and they will receive support for this overarching objective from several other Member States. The Parliament’s First Reading is scheduled for 19 February. For completeness I should add that in our opinion the negotiations on the draft Decision (6378/07) are proceeding very satisfactorily and we will be able to recommend support for it.

May I turn now to our Response to the Public Consultation and to the Partial Impact Assessment. Regarding the Public Consultation, as you will see, the quality of the responses—the views expressed by the public—was high. They were also broadly supportive both of the Commission Proposals and of our own evaluation of them. We were naturally encouraged by this and are taking the views expressed into account in our negotiating lines where appropriate.

The partial Impact Assessment is an assessment of the Regulation Proposal. This Assessment is based on both fieldwork, consisting of a number face-to-face interviews, and desk research undertaken by a consultancy on behalf of my Department. This rather complicated arrangement derives from the fact that the rules on the preparation of Impact Assessments changed last year during the currency of the work and it was, therefore, necessary to bring it into compliance with the new requirements. Turning to the substance, we have relied on the estimates of Business and other stakeholders. The Business response as interpreted by the consultants was to make some very broad brush attempts to quantify future costs and benefits. As you will see Business is very positive about the Proposal. While we believe we have arrived at as valid a set of calculations as this raw data will permit, our instincts tell us that, while benefits should substantially exceed costs, the assessment of the degree of benefits could be optimistic. Time alone will tell, however. Indeed, we believe that the decision that the European Commission has made not to quantify in its own Impact Assessment—because impacts and conditions will vary so much from business sector to sector in this very wide-ranging measure—highlights the difficulty of making such estimates in this area.

Mindful of the growing probability of a First Reading Agreement, it would be helpful if you were agreeable to my corresponding with you again soon about the outcome of the 19 February Vote and about Parliamentary Scrutiny clearance. I should be very pleased to try to answer any questions that you may have.

18 February 2008

Letter from Gareth Thomas MP to the Chairman

Further to my letter of 18 February 2008 updating your committee with a progress report on negotiations that have taken place on this dossier and its associated dossier (6377/07—Draft Regulation on Accreditation and Market Surveillance). In these circumstances I should be most grateful if your Committee would consider clearing this dossier from scrutiny at the most earliest opportunity.

On 8 February the Committee of Permanent Representatives gave a mandate to the Slovenian Presidency to negotiate a First Reading agreement on the basis of the Presidency’s compromise text. A subsequent meeting of the same committee supported the proposal which formed part of a wider package of goods aimed at strengthening the European Internal Market. I am enclosing a copy of the full text of the Decision Proposal.

My earlier letter reported that in our opinion the negotiations on this dossier were proceeding very satisfactorily and that we anticipated that we would be able to recommend support for it. This remains the case.

The Decision Proposal sets out the common principles that future product specific Community harmonisation legislation should follow but does not rule out a departure from this framework where necessary.

The negotiations began during the Portuguese Presidency but have not substantially changed the original proposal. For example, the Decision preserves many of the successful features of the New Approach model of Regulation such as the conformity assessment modules.

However, there are a small number of changes that are worth noting, but which do not compromise our position:

— the European Parliament has pushed for the strengthening of responsibilities (for regulatory compliance) across all the relevant economic operators in the supply chain, which we support;
— the general principles relating to the CE marking have been transferred from this dossier to 6377/07 (EU Regulation on Accreditation and Market Surveillance), whilst the references to CE marking in the specific modules has been recognised to be a drafting error and are now deleted;

— there is a new policy for the use of proportionate Conformity Assessment for SMEs in so far as this does not compromise the safety objectives of the legislation;

It is possible, that this dossier will be on the agenda of the Agriculture Council on 18 March. The European Parliament considered the compromise text in plenary session and voted to adopt it without amendment on 21 February. In these circumstances I should be most grateful for your committee’s scrutiny clearance of this dossier.

27 February 2008

Letter from Gareth Thomas MP to the Chairman

I am writing further to my letter of 18 February 2008 updating your committee with a progress report on negotiations that have taken place on this dossier and its associated dossier (6378/07—Draft Decision on a common framework for the marketing of products). This dossier may be on the agenda of the Agriculture Council on 18 March for First Reading Agreement. On this basis, I would be grateful if your Committee would consider clearing the Commission’s Proposal for a draft Regulation setting out the requirements for accreditation and market surveillance relating to the marketing of products at the most earliest opportunity.

On 8 February the Committee of Permanent Representatives gave a mandate to the Slovenian Presidency to negotiate a First Reading agreement on the basis of the Presidency’s compromise text. A subsequent meeting of the same committee supported the proposal which formed part of a wider package of goods proposal aimed at strengthening the European Internal Market. The European Parliament considered the compromise text in plenary session and voted to adopt it without amendment on 21 February (by a large majority). I am enclosing a copy of the full text of the draft Regulation. We expect to receive shortly the Commission’s formally amended Proposal to reflect the Vote in the European Parliament. This should contain its formal response to Parliament’s amendments although the substance should be reflected in the draft Regulation text as it now stands.

My earlier letter provided an update on the negotiations on this dossier. The negotiations began on the European Commission’s Proposal during the German Presidency in February last year. The original proposal has been substantially changed in terms of scope and to a lesser degree, content. These changes have occurred as a result of negotiations within Council and via amendments from the European Parliament.

I will detail the main amendments in sequence as they appear in the Regulation.

New definitions have been added to the text that mirror those in the complimentary Decision (6378/07). This aids the clarity of the Regulation.

Amending the scope of Accreditation was a key objective for us and we have been very successful in ensuring that Accreditation is now scoped by reference to the international standards and other relevant considerations. The European framework now covers all accreditation activities in the regulated and the voluntary areas.

There is a new Article on the principle on non-competition between National Accreditation Bodies (and with their Conformity Assessment Bodies) which is intended to strengthen the European Framework.

My earlier letter made reference to the inability of the Commission to define the scope of the Market Surveillance provisions better. The following changes have been made in an attempt to clarify the scope better:

There is a new definition of what product means in respect of the Regulation. This has the effect of excluding a number of areas that were never intended to be covered within the scope. This is, incidentally, an area where the UK has had a lot of influence in the negotiations.

Aspects of the market surveillance of consumer goods that were previously excluded from the Commission’s Proposal are now included albeit with the caveat that authorities should not be prevented from using, where appropriate, the additional measures provided for in the General Products Safety Directive. This essentially preserves the existing relationship of the Directive with the sectoral legislation; a key aim of the UK and other Member States.

The Principle of lex specialis should apply with the effect that the list of excluded legislation (in the former Article 13(3)) has been deleted. The inclusion of this principle was a late concession agreed to by the Commission to the Parliament in order to achieve a First Reading Agreement. My earlier letter covered this point in more detail and we continue to assess the effects with other Government Departments.
The scope of the border controls provisions has been expanded to include those consumer products that are not covered by harmonised sectoral legislation.

There are amendments aimed at achieving greater transparency within Market Surveillance programmes. There are other provisions that ensure the authorities concerned should apply the principle of proportionality and risk assessments.

There is new text aimed at developing Market Surveillance co-operation with third countries.

We have achieved our aim of ensuring that the control of products entering the Community market from third countries is not placed solely on the Customs authorities and that, instead, it should be based on the principle of co-operation and information sharing between the expert Market Surveillance authorities and the Customs authorities.

There are new provisions on the general principles of CE marking. These provide greater protection of the marking from misuse and places duties on Member States to enforce them. The European Parliament was keen to ensure that this is a matter governed by the Regulation rather than by the Decision.

The financing provisions have been extended in a number of areas to support co-operation between Member States.

There is a new Review clause covering the coherence of Market Surveillance rules in both this Regulation and the General Product Safety Directive.

Contrary to our assessment in Malcolm Wicks’ letter of 30 April 2007, to Michael Connarty MP, on Penalties, Article 36 has been retained but is now directed at economic operators and includes a provision that the penalties may be increased to take account of recidivism. We have ensured that the text does not unnecessarily incur upon national sentencing policy.

There is an amendment to Article 8(3) of the General Product Safety Directive to reinforce those provisions where products present a serious risk to consumers, but which should not effect the national transposing Regulations.

The date that the Regulation applies has been amended to include a given date, 1 January 2010.

Notable European Parliament amendments that were resisted included:

- Extending the principle of Lex Specialis across all products including the non-harmonised area.
- Implementing a new CE + mark for products which have undergone 3rd party conformity assessment procedures thus creating a two-tier marking system.

On the latter point the Commission has agreed to undertake an in-depth analysis of the use of 3rd party conformity markings.

28 February 2008

NATURAL GAS TRANSMISSION NETWORKS (13045/07)

Letter from Malcolm Wicks MP, Minister of State for Energy, Department for Business, Enterprise and Regulatory Reform to the Chairman

I am writing to revise some of the figures appearing in the above Explanatory Memoranda and their associated Impact Assessment. I apologise for having to do this—I am afraid some confusion arose in their drafting owing to the number of documents that needed to be produced in relation to the whole package of EU energy liberalisation measures the Commission produced in September.

A single Impact Assessment was submitted covering both proposal 13045/07 and 13049/07. This gave a figure for the total average annual benefits of the proposed revisions to both the Regulation and the Directive as £95 million a year, starting in 2010–11. Meanwhile an earlier calculation, a figure of £142 million a year, was given in the Explanatory Memoranda. The correct figure has since been calculated as £132 million per annum.

A revised version of the Impact Assessment and the two Explanatory Memoranda is attached, reflecting these figures and a further small reduction of the total cost over 20 years of the proposals from £439 million to £407 million.

There has also been a recalculation of the cost of the proposals for electricity, resulting in a small reduction in the cost over 20 years from £475 million to £470 million. I attach a revised Impact Assessment (not printed) for this too.
These changes do not affect the substance of the conclusions of the analyses, as the predicted benefits significantly outweigh the costs.

My apologies once again.
16 November 2007

Letter from Malcolm Wicks MP to the Chairman

Following my recent correspondence on the internal energy market, I thought you might wish to see the attached document (not printed) from the Portuguese Presidency, giving their assessment of the progress made in Energy Council discussions since the Commission made its proposals in September. Discussions in the Council have so far been focused on high level concepts rather than the detail of the text. We expect further progress in the New Year.

I also enclose the Explanatory Memorandum (not printed) on the Gas Regulation Regulation (EC) No 1775/2005 (document reference 10349/07) referred to in my letter to you of 16 November. I apologise for the delayed arrival of this document.
28 November 2007

PROTECTION OF PEDESTRIANS AND OTHER VULNERABLE ROAD USERS (13895/07)

Letter from the Chairman to Jim Fitzpatrick MP, Parliamentary Under Secretary of State, Department for Transport

Thank you for your Explanatory Memorandum on the protection of pedestrians and other vulnerable road users (13895/07). This was considered by Sub-Committee B during its meeting of 14 January. It was decided that the document should be held under scrutiny.

The Committee shares the Government’s concerns about the potential for increased costs to the consumer as a result of the mandatory instalment of the technologies proposed. However, we note that even a minor increase in the safety of pedestrians as a result of the use of new technology is reason enough to consider their use seriously. The Committee observed that the Government’s draft Impact Assessment produced a positive benefit to cost ratio, though not as convincingly as the Commission’s. It also noted the Government’s point that the Commission’s Impact Assessment was not based on full costings.

Given this, the Committee would appreciate it if the Minister could continue to keep it up to date on this issue and provide the Committee with further information at the end of the consultation exercise mentioned in the EM and once further cost estimates have been made. If it is the case that the current proposal does not ultimately provide a convincing cost-benefit argument, the Committee would be interested to know if the Government has any alternatives to offer. We would also like to stress the need for proper implementation of existing legislation aiming at the safety of pedestrians and road users.
16 January 2008

PUBLIC-PRIVATE PARTNERSHIPS (12303/05)

Letter from the Chairman to Rt Hon Jane Kennedy MP, Financial Secretary to the Treasury, HM Treasury

Sub-Committee B has been holding this item under scrutiny since 31 January 2006. In a letter dated 23 May 2006, we wrote to your predecessor, John Healey MP, requesting to be kept informed as negotiations progressed. We have not yet received any further information and would appreciate an update on the negotiations.

I should add that we shared the concern expressed in your department’s Explanatory Memorandum, about the implications for competitiveness of separate legislation in this field. Given these concerns, we would welcome knowing what stage the negotiations have reached, if any.
13 November 2007

Letter from Angela Eagle MP, Exchequer Secretary, HM Treasury, to the Chairman

Your letter of 13 November requested an update on progress on any negotiations following the European Commission’s Communication of November 2005, which set out policy options following the 2004 Green Paper on PPPs. Following a further discussion at the December meeting of the Advisory Committee on Public Contracts, there have not been any negotiations, because the Commission has yet to decide whether to make a legislative proposal on concessions. The following covers the relevant developments.

As set out in the Explanatory Memorandum submitted in January 2006, the Commission’s intention was to produce an Interpretative Communication on Institutionalised Public Private Partnerships (IPPPs), to clarify how the EC public procurement rules apply to the establishment of undertakings held jointly by both a public and a private entity in order to perform public services. It is expected that this Communication will be published by the end of the year.

In its 2005 Communication, the Commission stated that it favoured a legislative instrument regarding concessions, but would conduct further in-depth analysis. When the matter has been discussed with Member States in the Advisory Committee on Public Contracts, the Commission has indicated that it has still to decide whether to make a legislative proposal and, if it were to do so, what form this would take. In these discussions and in bilateral meetings with the Commission, Treasury officials have continued to take the line that if there were to be a legislative proposal, this would best be done by amending the public sector public procurement directive, 2004/18/EC, to cover service concessions, which are not currently within the scope of the directive.

A decision by the Commission on whether there will be a legislative proposal is expected in the spring of 2008. I will provide a further update as soon as further information is available.

11 February 2008

Letter from the Chairman to Angela Eagle MP

Thank you for your letter updating the Committee on the negotiations on this subject. Sub-Committee B considered your letter during its meeting of 25 February 2008.

The Committee has previously expressed its concerns about the potential for creating an unnecessary regulatory burden through legislation in this area and this remains the Committee’s view. The Committee also raised concerns about the potential for increased use of private partners from other Member States in UK PPP projects. Given the extensive use of PPP in the public sector in general, and the NHS in particular, a conflict of interest with such a partner could have a significant impact on public services.

It was agreed to clear this document from scrutiny, but the Committee intends to take a keen interest in any legislative proposals the Commission may decide to put forward.

The Committee is grateful for your commitment to continue to send further updates on this issue and it looks forward to receiving them.

28 February 2008

RAIL INFRASTRUCTURE QUALITY (6295/08)

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

Thank you for your Explanatory Memorandum concerning multi-annual contracts for rail infrastructure quality. It was considered by Sub-Committee B during its meeting on 31 March 2008 and it was decided to clear this item from scrutiny.

As the Committee may decide to conduct an inquiry into the First Rail Package at a later date, members would appreciate an update on the timetable for the Package.

1 April 2008
REAPING THE FULL BENEFITS OF THE DIGITAL DIVIDEND IN EUROPE (15365/07)

Letter from the Chairman to Stephen Timms MP, Minister of State for Competitiveness, Department for Business, Enterprise and Regulatory Reform

Thank you for the Explanatory Memorandum on the Commission’s Communication on “Reaping the full benefits of the digital dividend in Europe”. This was considered by Sub-Committee B at its meeting on 21 January 2008. The Committee agreed to clear the document from scrutiny but intends to take an interest in any future legislative proposals on this issue.

23 January 2008

REDUCTION OF CO\textsubscript{2} EMISSIONS FROM LIGHT-DUTY VEHICLES (5089/08)

Letter from the Chairman to Jim Fitzpatrick MP, Parliamentary Under Secretary of State, Department for Transport

Thank you for the Explanatory Memorandum concerning emissions performance standards for new passenger cars. It was considered by Sub-Committee B at its meeting on 25 February 2008 and it was agreed to hold it under scrutiny.

The Committee noted that a number of issues covered by the proposed directive, such as the use of penalty monies, the regulations for compliance pooling and consumer information, are likely to be subject to further negotiations. The Committee would be grateful if the Minister could keep the Committee up to date with developments. The Committee will also be interested to receive further details from the Minister once the Impact Assessment is completed.

26 February 2008

RESEARCH AND DEVELOPMENT: EUROSTARS (13088/07)

Letter from Ian Pearson MP, Minister of State for Science and Innovation, Department for Innovation, Universities and Skills, to the Chairman

Thank you for your letter of 23 October\textsuperscript{25} letting me know that Sub-Committee B had lifted scrutiny on the Eurostars Proposal. In your letter you asked for assurance that the application process will not be off-putting for SMEs.

The Government fully shares your Committee’s concerns that the Eurostars programme should be as user-friendly as possible, bearing in mind the particular resource constraints faced by SMEs. My officials have been and will continue to be paying particular attention to this aspect during the course of the negotiation on the Commission proposal and in the implementation of the programme.

I understand that Eurostars applications will be submitted on a relatively short standard form on which applicants will have to provide the information for a technical assessment of their proposal and financial, assessment of viability, both of which a potentially successful consortium should be able to provide. However, the form is only one of the issues around submitting an application: potential applicants may need help and, advice on other aspects, such as understanding eligible costs and whether their proposed consortium meets the eligibility requirements. All potential applicants are encouraged to contact their national Eureka office for information and advice on the Eurostars Programme, which in the UK resides within the Technology Strategy Board. You may recall Eurostars is an initiative of the Eureka network, those in the national Eureka offices understand the needs of these research-performing SMEs and have been involved in the development of the Eurostars application process.

All applicants, especially SMEs, are keen to know the results of their application as soon as possible. The gap between closing date for the call and the date by which applicants find out their result has been one of the regular complaints made about the Framework Programme. The Eurostars secretariat has publicly committed to letting applicants know their results 14 weeks after the date the call cut-off date, with grant discussions completed within four months of the cut-off date. I believe the evaluation mechanism the secretariat has developed, which is explained in more detail in the Guidelines for Applicants, combines this speed with the necessary rigour and is one of the aspects that will make Eurostars appealing to SMEs

I am confident that the overall process will meet the needs of the research-performing SMEs that will be at the core of Eurostars projects.

18 February 2008

\textsuperscript{25} Correspondence with Ministers, 11th Report of Session 2008-09, HL Paper 92, p81.
Letter from Ian Pearson MP to the Chairman

I am writing to follow up the Explanatory Memorandum submitted to your Committee dated 8 October 2007, and my letter dated 18 February 2008 regarding the application process for Eurostars.

I’m pleased to be able to confirm that the UK’s Technology Strategy Board have decided to commit funding for the participation of UK research-performing SMEs in Eurostars projects, which will amount to a minimum of £3 million over three years; £0.75 million in the first year, £1 million in the second and £1.25 million in the third. The Technology Strategy Board is also exploring the possibility of Regional Development Agency and Devolved Administration involvement, particularly in providing additional funding.

The Eurostars Decision is currently under consideration by both the Council and the European Parliament. I look forward to a rapid adoption of the Decision and I will keep the Committee informed on progress.

26 February 2008

ROAD TRANSPORT FUELS (6145/07)

Letter from Jim Fitzpatrick MP, Parliamentary Under Secretary of State, Department for Transport, to the Chairman

You wrote to Stephen Ladyman on 3 March 2007 regarding Sub-Committee B’s consideration of the above proposal, expressing a number of concerns and requesting the full impact assessment and results of stakeholder consultation.

The impact assessment was submitted on 2 August under cover of a supplementary Explanatory Memorandum, following which you wrote to me on 9 October, asking to be kept informed of the outcome of our consultation and whether we are able to gauge the level of support for our proposed negotiating stance.

I am now writing to provide you with the results of the consultation and to update you on developments on this proposal.

The Department launched its consultation on the proposal on 30 August 2007. This ran for 3 months, closing on 22 November 2007. The responses have now been analysed, and a detailed summary of the responses received is attached.

The key issue in this proposal was the inclusion of targets for reducing the lifecycle greenhouse gas emissions of petrol, diesel and gas oil for use in non-road mobile machinery. The Government’s assessment was that this would be met primarily by greatly increased biofuel usage, well in excess of the 10% biofuel by energy content target agreed, subject to certain conditions, by the Spring 2007 EU Council. In our Explanatory Memoranda we expressed concerns regarding the potential adverse sustainability impacts that might result from this.

The majority of consultees shared the Government’s sustainability concerns. However, few of them, and none of the environmental NGOs, were in favour of deleting the greenhouse gas reduction targets from the proposal.

The majority of stakeholders instead proposed adopting targets along with robust sustainability criteria to guard against adverse impacts. Some felt that the 10% target needed to be reduced to minimise the sustainability risk and for consistency with the Spring Council 10% biofuel by energy content target. Others felt that a 10% reduction was achievable with improved biofuels and contributions from some non-biofuel measures. The value of reviewing the target once more experience of the sustainability impacts was available was also highlighted.

In negotiations in Working Group and in the Council of Ministers, it has become clear that the overwhelming majority of Member States also favour adopting a target along with sustainability criteria. Many Member States believe that the 10% target is too high, although some can accept it, and the Commission continues to defend its 10% target as being achievable without excessive biofuel levels based on, in our view, unrealistic assessments of what might be delivered by non-biofuel measures. At present the amendments negotiated to the text do include a number of improvements in respect of the greenhouse gas reduction targets. Firstly, the targets are now relative to the fossil fuel greenhouse gas intensity in 2010, thus giving credit for biofuels adopted before 2010. Secondly the target is relative to the EU average, giving credit to fuel suppliers who have already invested in refinery improvements. Thirdly, the requirement for an annual reduction of 1% has been replaced by a 2015 and a 2020 target (5% and 10% respectively). The amendments do require biofuels to meet sustainability criteria if they are to count towards the target, however they do not define these criteria, but merely refer to requirements to be adopted in the recently proposed Renewable Energy Directive. The amendments also include the principles to be used in assessing lifecycle greenhouse gas emissions of fuels, with the details to be adopted by comitology.

26 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper, 184 P124.
The European Parliament’s Environment Committee have also voted to retain the greenhouse gas reduction target. They retained the 10% level, and in addition they adopted amendments requiring that biofuels counting towards the target must meet sustainability criteria. They adopted outline principles for these sustainability criteria, considering land-use, water use, impact on food supplies, workers rights, air, soil & water quality, deforestation and biodiversity impacts. They proposed that the details of these requirements and greenhouse gas assessment methodologies be defined by comitology. The European Parliament Plenary consideration of the proposal is currently scheduled for 10 March.

In view of the opinions of stakeholders, other Member States and the European Parliament’s Environment Committee, the Government is prepared to consider accepting inclusion of greenhouse gas reduction targets in this proposal provided that they are underpinned by robust and comprehensive sustainability criteria and greenhouse gas assessment methodologies, and that they are set at a level that we are confident can be delivered without adverse sustainability impacts. This would not, however, include accepting a target that implied biofuel quantities in excess of the 10% by energy content agreed at the Spring 2007 Council.

The Slovenian Presidency and the Parliament’s rapporteur are keen to seek a first reading agreement on this proposal. It is not yet clear within the Council Working Group whether a consensus can be reached on the greenhouse gas reduction targets in time to make this is feasible. Although the Presidency has provisionally included this dossier on the agenda for agreement of a Political Agreement in Council on 3 March, this looks exceedingly unlikely to be achievable. However, it is possible that it could be achieved in the 5 June Environment Council.

I will, of course, continue to keep you informed of developments.

5 February 2008

ANNEX A

CONSULTATION ON A EUROPEAN COMMISSION PROPOSAL TO AMEND EU PETROL, DIESEL AND GAS OIL QUALITY REQUIREMENTS

SUMMARY OF RESPONSES

Introduction

On the 30 August 2007 the Department issued a public consultation on a European Commission proposal to amend the EU Fuel Quality Directive (98/70/EC as last amended by 2003/17/EC). The proposal contains a number of detailed revisions to petrol, diesel and non-road gas oil specifications. In addition it contains a major new requirement for fuel suppliers to reduce the lifecycle greenhouse gas emissions of these fuels by 10% between 2010 and 2020. The Government’s assessment was that this target would primarily be met by greatly increased biofuel use, although reductions in refining and extraction emissions would also count towards the target. The consultation ran for three months, closing on 2 November 2007. Forty three responses were received. The break down between different sizes and types of organisations is shown in Table 1 below.

<table>
<thead>
<tr>
<th>Type of Organisation</th>
<th>No. of responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small to Medium Enterprise</td>
<td>5</td>
</tr>
<tr>
<td>Large Company</td>
<td>13</td>
</tr>
<tr>
<td>Representative Organisation</td>
<td>16</td>
</tr>
<tr>
<td>Interest Group</td>
<td>2</td>
</tr>
<tr>
<td>Local Government</td>
<td>1</td>
</tr>
<tr>
<td>Police</td>
<td>3</td>
</tr>
<tr>
<td>Member of the Public</td>
<td>1</td>
</tr>
<tr>
<td>Other</td>
<td>2</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>43</strong></td>
</tr>
</tbody>
</table>

The content of the consultation responses, and in particular the responses to the specific questions asked in the consultation document, is summarised below.
Nil Responses

The Association of Chief Police Officers, the Camping & Caravanning Club, the Justice Clerks Society, the North Western Traffic Area, the Police Federation of England and Wales, the Police Federation for Northern Ireland, the Road Rescue Recovery Association all entered a nil response.

Responses to Consultation Questions

1. Do you think the assumptions and cost estimates in the Regulatory Impact Assessment (RIA) appear realistic?

Eight respondees confirmed that they thought the assumptions were realistic and seven stated that they did not.

Greenergy commented that the use of US data on air quality emissions of biofuels was surprising given the difference in baseline fuel quality and engines between the US and the EU. They also note that switching gas oil to sulphur free could have significant impacts on diesel supply in the UK and that it is not clear that these impacts have been considered in the RIA.

CO₂ Star commented that, provided global sourcing of biofuel feedstocks was unrestricted, the price impact of increasing biofuel uptake would be negligible, but import restrictions would result in increased costs. Ford and the Society of Motor Manufacturers & Traders also commented that the relative cost of biofuels was likely to be lower than implied in the RIA due to the likelihood of crude oil prices remaining at high levels. Five Bar Gate Consultants and Bioverda commented that the biofuel cost assumptions did not appear to value biofuels with higher carbon savings relative to the RTFO buy-out price.

Case New Holland noted that harmonisation of non-road fuel quality and emissions standards provided benefits both for domestic use and export.

RWE NPower Cogen noted that the RIA did not take any account of greenhouse gas reductions which could be delivered by increased deployment of large scale Combined Heat & Power such as the Immingham CHP plant supplying heat to Humber and Lindsey Oil Refineries which DEFRA estimate as saving 3Mtonnes CO₂ per year. They comment that the EU-Emissions Trading Scheme has not been effective at delivering greenhouse gas reductions in the refining sector.

The Joint Nature Conservation Committee (JNCC) agreed that the level of biofuel required to deliver the target would be substantially in excess of the 10% by energy agreed by the Spring 2007 EU Council. They note that the Commission’s 10% greenhouse gas reduction target assumes 90% of the biofuels used are from high greenhouse gas saving sources which implies a massive shift away from current production processes which JNCC do not consider to be realistic in the timescale. They state that full consideration must be given to air quality impacts in order to ensure UK and EU long-term goals of no damage to ecosystems.

UKPIA commented that predicted diesel demand by 2020 would be double that of petrol. Bearing this in mind the projected biodiesel uptake rate in the RIA did not look sufficient to deliver a 10% greenhouse gas reduction. UKPIA estimate required blend levels of 26% biodiesel by volume and 31 % bioethanol by volume if a 50% greenhouse gas saving is assumed for biofuels. If a 90% greenhouse gas saving were assumed the required blend levels would fall to 17% biodiesel and 20%,bioethanol by volume, which still look very ambitious.

Biofuels Corporation believed that biofuels, as oxygenates, would increase vehicle efficiency sufficiently to offset increased volumetric fuel consumption (due to lower biofuel energy content per unit volume). They believed that higher than a 50% greenhouse gas saving should be assumed in the medium to longer term which would reduce the required biofuel uptake rate.

The Federation of Petroleum Suppliers noted that the estimated costs of the proposal were substantially in excess of the estimated benefits.

HMG’s view

US-EPA’s review of biodiesel is the most comprehensive assessment of its impact on air quality emissions of which we are aware. EPA derived relationships allowing the impacts relative to a range of different fuel qualities, including diesel of similar quality to EU diesel, to be estimated. The majority of the data comes from tests on a range of heavy duty diesel engines/vehicles covering technologies similar to EU vehicles up to Euro III standards.

Fuel suppliers have not generally raised any concerns regarding the impact of sulphur free gas oil on diesel supply. Since gas oil comes from the same portion of crude oil as diesel it does not seem likely that there will be a significant impact on supply, however it is noted that this will result in some increase in refinery CO₂ emissions.
Fossil fuel price forecasts used in our modelling are based on BERR oil price forecasts. The assumptions used in the RIA assumed that bioethanol would primarily come from current, high greenhouse gas saving sources and biodiesel would be a mix of rapeseed and palm oil derived fuel. However a uniform cost was used for each biodiesel source. We will revisit our biofuel cost assumptions and update the analysis with our latest assumptions.

Harmonisation of non-road engine standards with those in the US was achieved by means of Directive 2004/26/EC and was considered as one of this Directive’s primary benefits. In theory there may be some benefit in harmonisation of fuel standards, however in practice UK is a net importer of gas oil, but this comes from elsewhere within the EU not from the US so gas oil harmonisation is unlikely to be a significant benefit.

Increased use of CHP does appear to offer scope for significant greenhouse gas reductions. The exact level of these will be dependent on the methodology for apportioning CHP greenhouse gas savings between power and heat output. This is discussed further under question 4 and is an area that the Government is investigating.

The Government will revise the baseline petrol and diesel demand figures in line with the latest estimates. We agree that the Commission’s assumptions on the uptake rates of high greenhouse gas saving biofuels look unrealistic. Although biofuels are oxygenates, given the high baseline combustion efficiency of modern engines it is unlikely that they would significantly improve fuel consumption. Furthermore, in the case of biodiesel, any such benefit would be likely to be offset by the presence of heavier, harder to combust, hydrocarbons relative to fossil diesel.

2. Do you think the benefit estimates in the RIA appear realistic?

Six respondees confirmed that they thought the assumptions were realistic and four stated that they did not. Greenergy felt that the security of supply benefits of increasing biodiesel supply were not reflected.

The Scottish Environment Protection Agency (SEPA) felt that the RIA overestimated the greenhouse gas savings since the Commission proposed to introduce the greenhouse gas reduction target in advance of sustainability criteria and their greenhouse gas saving estimates for different fuels did not account for the potentially significant greenhouse gas impacts associated with land use change. UKPIA noted that high biofuel uptake could reduce the greenhouse gas savings possible by use of biomass in power generation.

CO₂ Star commented that biofuels had a substantial greenhouse gas benefit and that this would increase as yields rose and competition developed in the market for the lowest lifecycle carbon fuels. Biofuels Corporation quoted their lifecycle assessment data suggesting that greenhouse gas saving of current biodiesels could be improved to 68–76% if improvements in processing and co-product usage were made. They also note that Roundtable on Sustainable Palm Oil (RSPO) targets for increased oil yield would improve greenhouse gas savings.

BP commented that the projected Particulate Matter reductions were unlikely because sufficient FAME biodiesel to meet a 10% greenhouse gas reduction for diesel is unlikely to be available and, by 2020, the majority of diesel cars and vans would be fitted with Diesel Particulate Filters and it was unclear whether reductions in engine emissions would correspond to similar reductions after the DPF.

JNCC felt that the RIA it did not highlight all the policy or industry options and so did not highlight how selection of appropriate biofuel crops can lead to environmental benefits. They also noted that the RIA did not examine the benefits of promoting development of second generation biofuels.

HMG’s View

Improved security of supply is a secondary benefit of biofuel. This is discussed as a benefit in the RIA, including estimates of the quantity of fossil fuel expected to be ‘saved’. Valuing security of supply benefits is not possible as there is no information on which to value the contribution that saving a litre of fuel makes to improving the security of supply.

BP are right to query whether FAME biodiesel will deliver a reduction in tailpipe Particulate Matter emissions for DPF equipped vehicles. Given the exceedingly low emissions from such vehicles it is not currently possible to confirm whether or not there will be a reduction. As such the PM reduction estimates, which do already account for a high proportion of DPF equipped diesel vehicles in the fleet in 2020, represent the maximum of what might be achievable.

Biofuel greenhouse gas saving assumptions used in the RIA were based on those in the Commission’s Biofuels Progress Report. These include high greenhouse gas savings for ethanol from sugar cane, but biodiesel savings around the 50% mark. We will review these assumptions however an element of caution is appropriate in view of the fact that the targets will be legally binding.
The scope of the RIA is limited to the scope of the Commission’s proposal and amendments that could be made to it. Within the constraints of the legal base of the proposal (primarily Article 95 of the Treaty establishing the European Community), setting targets on a greenhouse gas reduction basis inherently stimulates the market for fuels. With a high greenhouse gas saving such as second generation fuels. If sustainability standards are adopted along with the target this should encourage decisions on crops and processes that are not environmentally damaging.

3. What are the likely costs of annual monitoring and reporting on fuel lifecycle greenhouse gas emissions? Chevron commented that methodologies for monitoring and reporting greenhouse gas emissions needed to be agreed before reporting requirements were put in place and that costs could not be estimated in advance of this. Greenenergy also felt that it was difficult to estimate costs at present. However they added that these would not be insignificant and that use of objective default greenhouse gas saving values would help keep costs down. UKPIA also commented that estimates were not possible until detailed reporting requirements were defined, but that this could be double RTFO reporting costs. BP stressed the importance of the greenhouse gas assessment methodology being standardised across the EU.

CO2 Star believed that annual reporting was excessive since agricultural production methods did not vary from year to year.

Five Bar Gate suggested that in their experience costs of monitoring and reporting for biofuels, from a feedstock source to fuel tank, would be £5,000–10,000 assuming data assessing the supply chain emissions existed but required collating. For fossil fuels the comparable cost would be £25,000–30,000. These costs would be substantially reduced if companies already had data collated under ISO 9000 or 14000 management systems. Biofuel Corporation did not foresee any increase in costs for those already monitoring and reporting for the RTFO. RWE Npower Cogen noted that a large proportion of the monitoring and reporting was already in place under EU-ETS and for the RTFO.

The Joint Nature Conservation Committee supported the need for detailed and regular reporting on biofuel production processes and proposed that UK auditing should be conducted by the Low Carbon Vehicle Partnership.

HMG’s View
Whilst use of default greenhouse gas saving values for biofuels may keep reporting costs down, given the wide variation in greenhouse gas performance of different biofuels, it is important to allow credit fuels according to the actual greenhouse gas benefits they deliver. Although agricultural production methods may not vary rapidly, the 2010–2020 period will feature a rapid growth in biofuel production with new crops and production processes coming on stream each year in addition a fuel supplier’s sourcing of biofuels may vary substantially from year to year for economic or other reasons. These issues all support a requirement for frequent reporting although there is no reason why data from one year should not be used for subsequent years where biomass production, processing and sourcing are unchanged.

4. Are you aware of data demonstrating that measures other than biofuels are capable of making a significant contribution towards the 10% greenhouse gas reduction (per unit of fuel energy) target?
Six respondees believed that there were other measures which would make significant contributions to the target. Fourteen respondees were not aware of other measures likely to make a significant contribution.

BP were not aware of any non-biofuel measures that could make a significant contribution to the target. Chevron, Shell and UKPIA commented that well-to-tank emissions for fossil fuels only constituted 15% of the lifecycle emissions and that many refinery efficiency improvements had already been delivered. Chevron and BP felt that carbon capture and storage techniques and refinery biomass use were not well suited to refinery applications. They specifically raised fuel additives as an issue, commenting that they had no evidence that these could make a significant contribution. BP did not see a justification for regulation (above and beyond EU-ETS) to reduce refinery emissions. They noted that refinery efficiency improvements would continue to deliver small greenhouse gas savings although these may be offset by increased difficulty of refining to meet growing diesel demand.

UKPIA noted that recent estimates for reduced flaring of a 1.5% reduction in lifecycle emissions were unrealistic as UK flaring (offshore and onshore combined) attributable to petrol and diesel, based on DEFRA figures is only around 0.5 million tonnes carbon (~1.3% of lifecycle emissions). Industry’s own figures on current flaring are around half this level. They also noted that future increase in diesel demand, poorer crude
...
that use of biofuels should not be expanded too rapidly in advance of technological breakthroughs and sustainability safeguards. Chevron also favoured a more cautious approach with proper investigation of environmental, social and sustainability impacts and queried whether the Fuel Quality Directive was the best legislative instrument for controlling fuel lifecycle greenhouse gas emissions. They saw sustainability criteria and acceptable greenhouse gas reporting methodologies as essential prerequisites for implementing greenhouse gas reduction target, which should not exceed the already agreed 10% biofuel by energy content target for 2020.

Ellis Transport Services highlighted concerns over impacts on food supplies globally and stated that control of a broad range of both direct and indirect sustainability impacts was necessary. Professor Paul Bardos commented that sustainability and greenhouse gas reduction assessments needed to consider the actual performance of individual fuels in order to reward the most sustainable and carbon neutral fuels.

The Joint Nature Conservation Committee expressed concern that EU policy on biofuels is proceeding in advance of the evidence on the quantity of biofuel which can be produced sustainably. They regarded clear and robust sustainability criteria as essential, addressing fertiliser and pesticide use, matching crops to local conditions, processing efficiency, transport emissions and in particular direct and indirect land-use change.

RSPB agreed that caution was appropriate but felt that more modest greenhouse gas reduction targets could be set without adverse sustainability impacts. These should account for improvements in fossil fuel production and levels of biofuel that could be sustainably produced. They should be backed up by lifecycle greenhouse gas assessment and there should be a review to ensure that adverse sustainability impacts are not occurring. RSPB do not support targets which require more than 5.75% biofuel by energy content since they believe that beyond this level sustainability risks are too great. If higher targets were adopted they regard it as essential that rigorous sustainability criteria be adopted and enforced including a 60% minimum greenhouse gas saving. They regretted the Government’s initial opposition to the inclusion of greenhouse gas targets in this Directive.

The Joint Nature Conservation Council agreed that sustainability risks were high and warranted a cautious approach. They and the Renewable Energy Association advocated aligning the greenhouse gas targets with the 10% biofuel by energy content. JNCC noted that this would guard against increases in the greenhouse gas intensity of fossil fuel and that it was preferable to a biofuels volume target in that it encouraged biofuels with good greenhouse gas performance. They suggested that targets should be sufficiently flexible to ensure long-term sustainability and respect the provisos attached to the 10% by energy content target. The REA stated that targets should take account of anticipated improvements in biofuel greenhouse gas performance. Robust sustainability criteria must be included or be referred to, guided by the precautionary approach, covering all aspects of production & use, protecting biodiversity, ecosystems, human well-being and encouraging innovation. International sustainability criteria should be developed through organisations such as the Global Bioenergy Partnership, the International Bioenergy Platform.

The Renewable Energy Association commended HMG’s revised approach of seeking greenhouse gas reduction targets which were consistent with the Spring Council’s 10% biofuel by energy content target (backed up by robust sustainability criteria and greenhouse gas assessment methodologies). However they commented that greenhouse gas reduction targets should reflect expected improvements in lifecycle emissions performance of biofuels up to 2020.

Ford, Shell, SMMT, UKPIA and BP stressed the need to avoid conflict with other EU targets, in particular the 10% biofuel by energy content target expected in the Renewable Energy Directive, and consistency with the EU-Emissions Trading Scheme.

BP supported the principle of technology neutral greenhouse gas reduction targets provided these were realistic, accompanied by standardised EU sustainability and greenhouse gas reporting criteria and allowed use of standard baseline data. They would like consideration to be given to a tradeable greenhouse gas reduction credit scheme as a means of meeting the targets. However they would like these elements adopted following a Commission study rather than as part of the current negotiation. They believed that transitional regulatory support to encourage the deployment of 2nd generation biofuels was required and should be the focus of Article 7a of the proposal (which currently sets greenhouse gas reduction targets). They and UKPIA expressed concern that differentiating between refinery processes in terms of their greenhouse gas emissions could penalise refineries with more complex refining processes extracting greater proportions of useful product. Differentiating between crude types could simply lead to a shuffling of crude supplies around the world with no global reduction in greenhouse gas emissions. UKPIA believe that for these reasons any targets should exclude fossil fuels. They believe that a 5% greenhouse gas reduction target would therefore be consistent with the 10% biofuel by energy content target.
Cummins, SMMT and Case New Holland all felt that any binding greenhouse gas reduction targets must be accompanied by recognised methodologies for assessing and monitoring sustainability. Ford shared this view adding that the greenhouse gas reduction targets must be realistic, but felt that it was reasonable to expect that sustainability measures would be developed in a timely manner. SEPA also felt that robust EU methods for assessing greenhouse gas performance and sustainability needed to be agreed before encouraging increased biofuel use.

The Food & Drink Federation commented that the levels of biofuel implied by the proposed greenhouse gas target would seriously distort the market for agricultural products. They cited OECD research as suggesting that even the Spring 2007 EU Council 10% biofuel target threatens to cause food shortages and damage to biodiversity. They urged HMG to ensure the Commission pays close attention to the sustainability concerns expressed over the 10% biofuel target.

Greenergy felt that targets could be set based on credible estimates of the volumes of biofuel that could be delivered with greenhouse gas reporting being adequate to prevent supply of fuels which had resulted in high greenhouse gas emissions due to land-use change.

CO₂Star felt that sustainability controls were pointless without equivalent controls on food production. They felt that this should not prevent adoption of greenhouse gas reduction targets and that tropical deforestation could be controlled by other measures such as purchase of rainforest, establishment of nature reserves and CO₂ credits for afforestation.

Five Bar Gate & Bioverda felt that existing UK work on sustainability reporting had raised awareness of sustainability issues sufficiently to ensure that biofuel demand was for sustainably produced biofuel. They also noted that EU production could provide a significant proportion of biofuel demand. OFTEC also felt that sustainability reporting standards as developed for the RTFO were sufficient to safeguard against sustainability risks, in particular bearing in mind European Commission estimates that 15% biofuel could be supplied by EU biomass production not accounting for improvements in plant technology or crop yield.

RWE NPower Cogen believed that the greenhouse gas reduction targets could be met by increased use of CHP and levels of biofuel use already foreseen by the EU Biofuels Directive. Biofuels Corporation believed that the 10% target was achievable without sustainability risks if appropriate greenhouse gas reporting and sustainability criteria were in place. They suggested separate targets for fossil and biofuels in order to ensure improvements were delivered in both areas.

The Environmental Industries Commission supported setting greenhouse gas reduction targets in the proposal. They noted the dearth of data to enable a robust setting of a realistic target and recommended that the Commission set up a comprehensive, independent study to enable a target to be set. They did not support amending the proposed target to an alternative level in advance of the conclusions of such a programme.

**HMG’s View**

The majority of consultees share the Government’s concern over potential sustainability impacts. However with a few exceptions they do not support deleting the greenhouse gas reduction targets from the proposal, rather they favour adopting targets along with sustainability criteria. Some consultees favour a reduced target whilst others believe that the 10% target is achievable.

Bearing in mind the views of stakeholders, those of other Member States and of the European Parliament the Government can consider inclusion of greenhouse gas targets in the Fuel Quality Directive. However we believe these must be set at a level which we can be confident is achievable without adverse sustainability impacts and must be backed up by robust and comprehensive greenhouse gas assessment methodologies and sustainability criteria. The Government is examining the available data on greenhouse gas reduction potential including from biofuel, reduced flaring and increased use of CHP in order to reach a view on a suitable level of target. Given the uncertainty and sustainability risks we would support regular reviews of the targets and their sustainability impacts.

The Government agrees that conflict with the Renewable Energy Directive and EU-ETS should be avoided. We would not support limiting the scope of the target to greenhouse gas reductions from biofuels since this is not technology neutral, would not encourage cost effective alternatives to be pursued and would allow worsening greenhouse gas performance of fossil fuels. This is clearly undesirable.
6. Do you agree that a single grade with a maximum 10% ethanol content is preferable to parallel marketing of separate 5% and 10% grades?

Fourteen respondees confirmed a preference for a single petrol grade and four stated a preference for two separate grades.

Ellis Transport Services stated already high levels of misfuelling as an argument for keeping the number of grades to a minimum to avoid confusing consumers. Chevron, Greenery, Shell, UKPIA and the Federation of Petroleum Suppliers also supported this approach, agreeing that the fuel distribution network did not have capacity to handle an additional grade and that a single grade with a 10% maximum ethanol content allowed maximum flexibility in the fuel supply system. BP believed that the majority of existing vehicles were compatible with 10% ethanol but that flexibility to allow continued supply of some fuel with <5% ethanol, in order to support those vehicles which were not, was appropriate. The Federation of Petroleum Suppliers also noted that stocking two grades would also reduce throughput rates, exacerbating problems with biofuel stability, separation etc. UKPIA suggested that a two grade system could reduce uptake if lower blends were widely available at lower cost. They estimate that the cost of establishing a separate distribution channel for a new grade would be in the hundreds of millions of pounds.

TfL supported the principle of a single grade of fuel, provided that this would not invalidate warranties, increase ground level ozone (due to increased evaporative hydrocarbon emissions) and there was no disproportionate impact on lower income families.

SEPA felt that consumers should have full information on the biofuel content of fuel. They did not however expect any significant risk of 10% ethanol fuels damaging vehicles. They did however note that the lack of a minimum ethanol content for either grade meant that they could in practice be identical which would make differentiated labelling misleading.

Ford and SMMT commented that older vehicles might not be compatible with more than 5% ethanol. They argued that experience with 10% ethanol in the US did not translate to the EU market. They agreed that ‘High biofuel petrol’ was a misleading label for 10% ethanol. The Environmental Industries Commission commented that whilst a single grade was desirable there were some vehicles which would not be compatible with 10% ethanol. They recommended limiting ethanol content to 5–7% and increasing oxygen content to a level equivalent to 10% ethanol content.

This would enable greater blending of bio-ETBE up to 15%, increased uptake of biofuel and no need to supply two grades.

Moore & Large raised concerns that increased ethanol content in petrol created a risk of carburettor icing, in particular in respect of smaller capacity motorcycles. This poses a safety risk, especially in the worst case scenario of the carburettor throttle slides freezing fully open.

John Brennan raised the issue of compatibility of composite fuel tanks with higher petrol-ethanol blend levels. He cites testing in the US sector on marine fuel tanks as showing a rapid loss of hardness and strength when exposed to ethanol. This could pose potential safety risks.

RSPB did not support raising the ethanol content to 10% as they believe this facilitates levels of biofuel use which cannot be met by sustainable production. In contrast CO2 Star favoured increasing permissible ethanol content to 15%.

Biofuels Corporation suggested that an obligation should be imposed on CEN to increase biodiesel content to 10% in the industry diesel standard EN590. UKPIA would prefer a CEN review of experience in markets where 10% ethanol petrol is standard to an increase in permissible ethanol content in the Directive.

**HMG’s view**

The majority of responses favoured a single grade approach as allowing industry most flexibility and avoiding major infrastructure costs. Whilst it seems unlikely that petrol containing 10% ethanol will cause problems for the majority of the vehicle fleet there are specific potential issues with a few vehicles that merit further consideration. In particular carburettor icing and compatibility with plastic fuel tanks and other components need to be investigated. A single petrol grade with only a maximum ethanol content would permit continued marketing of low ethanol content fuel if this were to prove necessary to address these problems.
7. Do you agree that some flexibility over compliance with gas oil sulphur requirements to accommodate minor contamination in the distribution chain is appropriate?

Eleven respondees supported flexibility while eleven felt that 10mg/kg sulphur content could be complied with at point of delivery to users.

Ellis Transport Services and BP favoured some flexibility noting that the minor levels of contamination would have no impact on emissions.

Chevron agreed that flexibility was required and felt that sulphur content measurement should apply at point of tanker loading only. BP, Shell and UKPIA proposed a 50mg/kg requirement which would be sufficient to accommodate any contamination concerns.

TfL commented that they and their contractors used non-road mobile machinery. They supported flexibility, but suggested that an upper limit be applied to the permissible level of contamination.

The Federation of Petroleum Suppliers noted that without flexibility separate tankers would be required for sulphur free fuels increasing emissions in fuel delivery due to extra journeys. This would also be uneconomic for the majority of suppliers causing them to withdraw from the market for either high or low sulphur products. This would increase sulphur free road fuel supply problems for small filling stations. They regarded it as essential that flexibility be allowed over sulphur content at point of delivery. Shell agreed that logistical constraints would make meeting 10mg/kg sulphur at point of delivery extremely difficult.

JCB commented that, although technology required to meet Stage IIIB emissions standards (c.2010) defined in Directive 2004/26/EC might be able to accommodate 50mg/kg fuel sulphur content, 10mg/kg sulphur content was a necessity for technology under consideration for Stage IV (c.2014) emissions standards. This fuel needs to be available well in advance to assist the entry into the market of Stage IV engines. Johnson Matthey commented that sulphur free fuel improved the efficiency of exhaust aftertreatment systems and that NOx absorbers in particular would require sulphur free fuel.

Perkins Engines, Case New Holland, Johnson Matthey and Cummins explained that lack of availability of 10mg/kg sulphur fuel could compromise the technological solutions chosen for Stage IIIB emissions compliance, potentially resulting in different technologies for the EU and US markets. They also noted that fuel sulphur content would adversely affect in-service conformity with emissions standards. Perkins and Cummins could however accept a 15mg/kg sulphur level at point of delivery to users as this aligned with US levels. SMMT opposed any flexibility arguing that non-road emissions control technology required the same sulphur content as road diesel.

RSPB and Johnson Matthey felt that sulphur free gas oil requirements should be brought forward by a year to allow earlier adoption of non-road engines with diesel particulate filters. They also felt that sulphur free inland waterway gas oil should be introduced in 2009. Johnson Matthey commented that this would reduce contamination risks since only a single grade of fuel would be in the marketplace. Johnson Matthey and Ford also argued that earlier introduction of the fuel would reduce contamination issues by providing longer for current fuel stocks to be flushed through.

OFTEC, Five Bar Gate, Bioverda and the Federation of Petroleum Suppliers noted that sulphur free fuels might have consequences for vehicle operability, noting specifically reduction in fuel lubricity and that there would be a cost in compensating for this with lubricity enhancing additives. Case New Holland also noted the importance of maintaining fuel lubricity.

**HMG’s View**

In view of the above responses HMG remains of the view that there is a practical requirement for a small degree of flexibility over gas oil sulphur content at point of delivery to the user. However in order to accommodate engine manufacturers concerns regarding excess sulphur levels compromising alignment with US standards it is desirable to impose a limit at point of delivery to the user that is well below 50mg/kg. The Government is of the view that a 20mg/kg sulphur limit at point of delivery would adequately cover contamination concerns whilst remaining, closely aligned with the 15mg/kg sulphur requirement in the US.

Bringing forward the introduction of sulphur free gas oil is unrealistic given the time it will take to agree and transpose a Directive. In addition diesel particulate filter equipped non-road engines can be introduced in advance of all gas oil switching to sulphur free simply by voluntary sourcing of sulphur free fuel where these engines are used. Aligning inland waterway fuel sulphur content with that of other non-road fuels will not remove the contamination risk as heating gas oil will remain at 1000mg/kg levels and is distributed by the same suppliers and same road tankers as non-road gas oil.
The Government is aware of the potential vehicle operability issues in terms of reduced lubricity, Bulk modulus and compatibility with nitrile seals. Industry addressed these issues in the introduction of ultra low sulphur road fuels, primarily by the use of fuel additives. We anticipate that in practice UK fuel suppliers will supply marked road fuel for NRMM use containing all the required additives. The RIA includes the cost of fuel to this specification in its estimate of the costs of supplying sulphur free gas oil.

8. Do you think that the assessment of the effect of the regulations on competition and small businesses looks reasonable?

Five respondees confirmed that they thought the assessment was realistic and three stated that they thought it was not.

Greenergy commented that the assessment did not consider the impact of higher pricing on small firms consuming diesel and gas oil. Case New Holland commented that suppliers of after treatment systems and off-road equipment had not been considered. The Federation of Petroleum Suppliers noted that small rural filling stations would be disproportionately affected by certain aspects of the Commission’s proposal (two petrol grades, biofuel storage difficulties and cross-contamination). SMMT noted that ensuring high fuel quality was imperative for modern engines even if this excluded small fuel producers.

**HMG’s View**

Increased biofuel use and reduced gas oil sulphur content will increase fuel costs. This has been assessed in the RIA. Since this would result in a uniform increase in fuel unit cost to all users. It is not clear how this could impact on competition or disproportionately affect small businesses. The purpose of the sulphur free gas oil requirements is purely to enable aftertreatment and off-road equipment manufacture to meet their emissions limit obligations under Directive 2004/26/EC. The impact of the Fuel Quality Directive proposal on these large businesses is therefore a positive one.

9. Do you foresee any unintended consequences of adopting this regulation?

Eleven respondees did foresee unintended consequences, primarily restating sustainability concerns already expressed.

Ellis Transport Services and the Trading Standard Institute felt that the implied biofuel demand would impinge on food supplies and efforts to eradicate food shortages in developing nations. Chevron felt that the greenhouse gas reduction target could lead to increasing dependence on biofuels from unsustainable sources and that there was a risk of targets conflicting with other regulatory targets e.g. the EU-Emissions Trading Scheme and the forthcoming Renewable Energy Directive. RSPB, the Joint Nature Conservation Committee and SEPA felt that there was a significant risk of unsustainable biofuel use. RSPB urged for annual Commission reviews to monitor this situation. UKPIA also noted that, without adequate safeguards, the adoption of greenhouse gas targets could have impacts on sustainability, availability of biomass for other purposes (e.g. power generation) and investment in EU refineries. They also noted that there could be difficulties in third countries not wishing to supply greenhouse gas data and protectionism of EU agriculture.

Greenergy commented that the Directive requirements and national schemes such as the Renewable Transport Fuels Obligation needed to be consistent e.g. in terms of greenhouse gas reporting methodologies.

Ford and SMMT commented that further definition of the mechanisms for delivering greenhouse gas reductions was necessary.

The Federation of Petroleum Suppliers were concerned about the impact on the viability of small rural filling stations. They suggested that an exemption for small, speciality fuel suppliers was necessary.

**HMG’s View**

HMG agrees that Directive and national requirements will need to be aligned. We are engaging with the Commission and other Member States to ensure that our experience on greenhouse gas reporting methodologies is considered in defining EU requirements. Adjustments to the detail of the RTFO scheme may be required to implement the greenhouse gas reduction targets in this Directive once adopted, if so we will consult on these in due course.

The Government agrees that sustainability impacts including on food supply and price need to be addressed by adopting robust, comprehensive sustainability criteria along with the greenhouse gas reduction targets.
Additional Comments/Issues Raised

Fuel Labelling
OFTEC, Five Bar Gate & Bioverda favoured consumer labelling of fuels at pumps, on public transport etc of the greenhouse gas performance of fuels.

HMG’s Views
HMG is not convinced of the benefits of consumer labelling of fuels. Levels of vehicle misfuelling suggest that consumers do not absorb information from fuel pumps very readily. There is also a risk of confusion if consumers do not have a context for the figures that are given at the fuel pump.

Non-Road Fuel
The Environmental Industries Commission supported the Commission’s proposals on gas oil sulphur content as drafted.

JCB and Case New Holland both commented that they would like off-road gas oil to meet full road fuel specifications. They state that cetane, lubricity, viscosity, density, cloud point and cold filter plugging point are all important to ensure smooth operation of machinery.

Freightliner estimate that increased costs for sulphur free gas oil combined with increased (volumetric) fuel consumption will increase fuel costs by 6.7–10.5%. They also consider that maintenance costs could increase by 2% due to degradation of fuel injection equipment and fuel seals. Freightliner and NFU Scotland suggest a reduction in gas oil duty would help reduce the impact of gas oil cost increases. OFTEC and Bioverda noted that there was significant potential for blending biodiesel into non-road gas oil. Bioverda commented that changes to duty rates might be required to encourage this.

Freightliner welcomed Government’s intention to seek a later date for the application of sulphur free gas oil requirements to rail, but question whether 31 December 2011 is late enough. They note that the application of Stage IIIB emissions standards to rail engines is subject to a Commission review and could be delayed and that the standards only apply to new engines whilst sulphur free gas oil would apply to all rail fuel. They also suggest that Stage IIIB could be met by alternative technologies which do not require sulphur free fuel. They also express concern that rail vehicles could not use heating gas oil in the interim 2009–11 period as this is a heavier unrefined fuel.

The Liquefied Petroleum Gas Association noted that there was significant use of LPG as a fuel in the non-road sector, specifically in fork lift trucks.

The Federation of Petroleum Suppliers commented that sulphur free gas oil may create problems in heating applications which rely on a yellow flame colour, imparted by the fuel sulphur content, to detect the presence of the flame.

Shell and UKPIA commented that the proposed tightening of inland waterway gas oil sulphur content were not adequately justified by technology needs or a cost-benefit case.

HMG’s View
Fuel parameters operability parameters such as lubricity, viscosity, cold filter plugging point etc are not prescribed by legislation even in the case of road fuels. It is for the fuel industry to ensure they supply fuel which is ‘fit for purpose’. To assist in this the oil and automotive industry agree detailed industry standards on fuel. This approach works extremely well and the Government sees no need to regulate gas oil operability parameters.

Freightliner’s fuel cost increase estimates are within the range included in the RIA. An impact on fuel consumption due to reduced fuel density is also likely although, bearing in mind gas oil and diesel densities this is likely to be at the low end of the range estimated by Freightliner. We would not expect increased maintenance costs as fuel additives are likely to compensate for any adverse lubricity and material compatibility effects of removing sulphur. Policy on fuel duty is a matter for HM Treasury.

To date there has been no support from other Member States for a 31 December 2011 application date for rail gas oil, there is no realistic possibility of securing a still later application date. If the application date of Stage IIIB emissions standards for rail engines is delayed then it would be more appropriate for the Commission proposal implementing this delay to amend the sulphur free gas oil date. Engine manufacturers indicate that they do expect to use catalytic aftertreatment systems on Stage IIIB engines, requiring sulphur free gas oil. HMG’s understanding from refiners is that non-road and heating gas oil (although not kerosene, heavy fuel
oil etc) are identical products so there should be no problems with making current specification gas oil available for rail engines in the 2009–11 period if a derogation is secured.

Vehicle–Biofuel Compatibility

Johnson Matthey commented that they would like limits on phosphorous content and alkali metal content of fuels to be regulated to address increased risks of catalyst poisoning arising from biofuel use.

Cummins commented that engines compliant with 20% biodiesel or more could be supplied given adequate leadtime. However they felt that properties of first generation biofuels necessitated more careful handling and storage, which might require regulation. Compatibility of existing engines was less certain. Second generation biofuels appeared to overcome compatibility issues, but Cummins expected that these were likely to be 15 years from large scale Commercial production.

HMG’s View

Phosphorous and alkali metal content has not previously been regulated for road fuels. If required these parameters could be added to industry fuel standards aimed at ensuring compatibility of fuels and vehicles.

Permissible Biofuel Blend Levels

Greenergy commented that increasing EN590 biodiesel blending levels to 10%, currently under discussion in CEN, should be allowed as soon as possible. Perkins Engines noted that fuel injection equipment suppliers only at present warranted their products on up to 5% biodiesel and that regulation of biodiesel quality would probably be required to enable warranties on higher blend levels. UKPIA commented that inconsistencies between current biofuel targets and fuel specifications must be resolved.

HMG’s View

The Government agrees that CEN should raise the permissible biodiesel content of diesel under the industry standard EN590 as soon as this is possible bearing in mind the compatibility of the vehicle fleet with blends of this level. As noted above we regard engine/fuel compatibility as a matter for industry standards. We agree that inconsistencies between the 10% biofuel target and current limitations in fuel specifications need to be resolved. This is why we are pressing for a Commission review to consider the scope for raising ethanol content to 15% by volume.

Greenhouse Gas Monitoring Methodologies

CO2 Star pointed out that greenhouse gas monitoring methods for fossil fuels had however been developed by ISO (ISO 14042), featuring allocation of emissions by product energy content adjusted by a weighting for product value. They favoured this approach and commented that open discussion and agreement on a standard methodology was essential as the impact of new fuels varied greatly depending on methodology. Under-reporting of baseline emissions would adversely effect the feasibility of biofuels. Placing restrictions on marketing of biodiesel from tropical oils and Brazilian ethanol would exclude biofuels with the best lifecycle greenhouse gas benefits. UKPIA also commented that a clear unambiguous EU wide methodology is required and that this should be developed with full stakeholder participation and trialed before it is implemented.

The Environmental Industries Commission recommended that LowCVP experience in developing greenhouse gas assessment methodologies be drawn on. TfL also supported inclusion in the Directive of GHG methodologies along the lines of those proposed for the RTFO. They stressed the importance of stringent accreditation requirements.

HMG’s View

HMG has ensured that LowCVP experience of greenhouse gas methodologies has been shared with the Commission and fed into expert group discussions on this aspect of the proposal. Detailed assessment methodologies will be adopted by Comitology. We anticipate that the Commission will discuss procedures in draft with an expert group including stakeholders.
Heating Gas Oil

OFTEC, Five Bar Gate & Bioverda note that the consultation does not consider use of biofuel in gas oil or domestic heating oil. They comment that the UK situation of using kerosene rather than gas oil for domestic heating oil is something of an anomaly in the EU.

HMG’s View

The scope of the Commission’s proposal is limited to road fuel and machinery gas oil. Gas oil used in heating is dealt with by another instrument, the Sulphur Content of Liquid Fuels Directive, and any proposals for including biofuels in heating oil would need to be made under this Directive.

Ethanol Vapour Pressure, Metallic Additives & Diesel PAH Content

Ford, SMMT, Shell and the Environmental Industries Commission oppose the ethanol vapour pressure waiver as this will increase evaporative emissions. Ford and SMMT felt that the arctic vapour pressure derogation in the Fuel Quality Directive needed improving to ensure it did not apply where it was not required as this also could lead to unnecessarily increased evaporative emissions. BP and the Renewable Energy Association also opposed the ethanol vapour pressure relaxation and commented that this slanted the playing field in favour of ethanol compared to other biofuels which do not require vapour pressure relaxations and risked stifling innovation. UKPIA felt that if the ethanol vapour pressure waiver were adopted it should apply equally to Member States with 60kPa and 70kPa petrol summer vapour pressure limits. Regarding the petrol vapour pressure derogation for cool summer climates they noted that UK summer temperatures were similar to those in Sweden, Finland and Norway and substantially cooler than other North European states such as France and Germany. In addition to ensuring adequate cold start performance the vapour pressure derogation reduces the risk of flammable mixtures forming in the fuel system presenting a static ignition risk.

Ford and SMMT would like to see use of metallic additives prohibited in order to protect exhaust aftertreatment systems and methanol content of petrol reduced. UKPIA did not believe it was necessary to ban metallic additives as additives adversely affecting engine performance will be effectively banned by new wording in CEN standards. Johnson Matthey welcomed the Commission’s proposal to develop approval requirements for metallic fuel additives.

Ford, SMMT and the Environmental Industries Commission supported the Commission’s proposal to tighten diesel PAH content to 8%. Shell and UKPIA supported the Government’s intention to seek retention of the current 11% PAH content for diesel. UKPIA noted that PAH emissions are products formed by incomplete combustion rather than the PAHs in the fuel and that vehicle emissions control technologies will reduce diesel vehicle PAH emissions to around 2% of UK total.

HMG’s View

HMG agrees that an ethanol vapour pressure waiver is undesirable and that better definition of the application of the arctic vapour pressure derogation is required. Currently neither metallic additives nor methanol are used to any great extent in the EU suggesting that there is no need to regulate in this area. Furthermore we are aware that there is still debate regarding both of these issues, making it difficult to make regulation which is justified by the evidence base.

Review to Consider Raising Petrol Ethanol Content to 15%

The Renewable Energy Agency raised concerns that HMG’s intention to press for a review of the case for increasing ethanol content of petrol to 15% by volume could be seen as backtracking on the Spring Council commitment to 10% biofuels by energy.

HMG’s View

This is exactly the opposite of our intention. At present the proposal contains no commitment to increase the maximum permissible ethanol content of petrol beyond 10% by volume, which is only around 7% by energy. To enable the 10% by energy content target to be reached, an obligation needs to be placed on the Commission to review when the ethanol content of petrol can be increased to 15% by volume.
Letter from the Chairman to Jim Fitzpatrick MP

Thank you very much for your letter dated 5 February 2008 which Sub-Committee B considered at its meeting on 25 February 2008.

We are grateful for the summary of the consultation results. We also note that in light of the position supported by stakeholders, other Member States and the European Parliament’s Environment Committee you are prepared to modify your position. We would be interested to see whether negotiations would produce the necessary compromise in time for a first reading agreement. For that reason the Committee would appreciate being kept informed on the final compromise before releasing the document from scrutiny. Until then we will maintain scrutiny.

The Committee would also be grateful for further information on what vehicle maintenance standards and enforcement mechanisms will be included in this proposal.

26 February 2008

SAFER INTERNET PROGRAMME (14933/06, 14937/06)

Letter from Shriti Vadera MP, Parliamentary Under Secretary for Business and Competitiveness, Department for Business, Enterprise and Regulatory Reform, to the Chairman

I refer to various questions that your Committee posed for my predecessor Margaret Hodge on 7 February 2007 on an Explanatory Memorandum on two Commission Communications on Safer Internet Plus (27999) 14933/06 COM and 149378, with the aim of reporting to your Committee in January 2008.

First, I apologise for the delay in writing to your Committee with the questions that you raised. This has been caused by an oversight by my Department and we will endeavour to put further processes in place to prevent this happening again.

Your Committee was concerned that the programme for 2005–08 was spending too many resources on the hotlines and not enough on awareness and educational issues. You were also concerned about the insufficient involvement of children in the programme.

On the first question, both the 2007 and 2008 programmes, suggest that they will spend at least 50% of the allocated budgets on awareness raising. For 2007–08, the Commission has funded €8,371 million worth of awareness projects. This compares to €6,861 million given to the hotlines. (€1.26 = £1) You should also be aware that the programme funds some hotlines that also act as awareness nodes; thus some of these monies are also being used to educate young internet users. Therefore some realignment of resources has been made in realigning the programme towards addressing the education of young internet users. The proposed new programme (which you may have already seen—Explanatory Memorandum 7241/08 ADD 1, 2) runs from 2009–13. It recognises that education is one of main tools for keeping children safe on the Internet and has proposed spending 50% more on awareness raising than the hotlines.

On the question of children and young people being given a voice in the programme, progress on this issue has admittedly been slow, but young people played major roles in the Commission’s Safer Internet Days in both 2007 and 2008 in various Member States including Brussels. Children from the UK participated in the 2008 event.

The calls for bids for awareness nodes projects for 2007 and 2008 now strongly encourage the awareness nodes to include the participation of children and young adults in their work, by setting up youth forums to help design their awareness raising programmes. It must be said that most awareness nodes throughout Europe do not yet appear to have set up these forums, but most now at least suggest that they consult children and young adults. The UK’s awareness node (Child Exploitation and Online Protection Centre—CEOP) now has such a panel, helping it to better target its education programmes, as do the Dutch.

As part of the Safer Internet Programme in 2007, a survey was carried out across all Member States plus Norway and Iceland, where focus groups of children in each country were interviewed in depth about their use of the technologies and how they perceive and deal with risks. The results of this have been fed into the work of the Programme. Again, it is one of the objectives of the new proposed programme, that there is now a specific focus on getting views from children with the aim of better understanding their views on and experiences with using online technologies and benefiting from their contributions when addressing awareness, actions, tools, materials and policies. UK children took part in this survey.

29 April 2008

28 Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p129
Letter from Shriti Vadera MP to the Chairman

I refer to your letter of 2 February 2007 to Margaret Hodge. Please accept my apologies for the delay in answering this question. This has been caused by an oversight by my Department and we will endeavour to put further processes in place to prevent this happening again.

You expressed concern about the poor level of awareness of the Hotlines and the “Awareness Nodes” detected by the evaluation of the 2003–04 Safer Internet Plus Programme. You also asked whether we could indicate to the Committee, which specific educational initiatives the Government would recommend to the Commission.

During the course of the year, the Commission hosts meetings on the Safer Internet Programme, where officials discuss how the Programme is progressing with the Commission and Member States. At these meetings, we freely share information on the activities that we are carrying out under the Programme including in the case of the UK details of the activities of The Child Exploitation and Online Protection (CEOP) Centre, which under the programme is the UK’s “Awareness Node”. The Centre has obtained funding from the Programme to roll out an educational programme aimed at primary schools.

As the above suggests, the Safer Internet Programme is in part a funding programme, where organisations from Member States can bid for monies under various headings, including raising awareness and education of internet users. Thus, CEOP has obtained a considerable sum from the Commission for the above, and this proposal was considered by both the Commission and a panel of independent experts as being of a very high standard. This is rightly seen as the UK influencing the Commission on educational issues.

You will also wish to be aware that educational issues feature strongly in the Commission plans for extending the Safer Internet Programme from 2008–13; these include additional efforts to encourage delivery of the awareness message to children through the channel of schools, and actions to promote public awareness by providing adequate information about possibilities, risks and ways to deal with them in a coordinated way across Europe and by providing contact points where parents and children can receive answers to questions about how to stay safe online.

2 May 2008

SERVICES OF GENERAL INTEREST (15650/07)

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

Thank you for your Explanatory Memorandum on “Services of General Interest, including social services of general interest: a new European Commitment”. This document was considered by Sub-Committee B during its meeting on 28 January. The Committee was interested to note the contents of the communication and decided to clear it from scrutiny.

30 January 2008

SINGLE MARKET FOR THE 21ST CENTURY EUROPE (15651/07)

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

Thank you for your Explanatory Memorandum on the Commission’s review of the Single Market. It was considered by Sub-Committee B at its meeting of 21 January 2008. It was decided to hold this document under scrutiny as the Committee intends to publish a report on this review in the near future.

23 January 2008

Letter from the Chairman to Gareth Thomas MP

As you may know, the Committee recently published its report on the Commission’s Review of the Single Market, Single Market: Wallflower or Dancing Partner29 On the whole our report agrees with the Government’s and the Commission’s positions. The Committee is content, therefore, to lift scrutiny on this document (15651/07). The Committee will, however, maintain scrutiny on a number of the related legislative proposals, particularly the third energy package and the e-communications proposals.

22 February 2008

SLOVENIAN PRESIDENCY: TRANSPORT PROPOSALS

Letter from the Rt Hon Rosie Winterton MP, Minister of State, Department for Transport, to the Chairman

I thought your Committee might find it helpful to have an update on transport proposals that will be progressed in the next few months, including the Slovenians’ plans for their Presidency.

The dates for the next two Transport Council meetings have been confirmed as 7–8 April and 12–13 June. The Slovenians have indicated that their broad priorities are: transport safety across all modes; rail transport; a transport Treaty with the Western Balkans; and the Galileo programme. The Slovenian Transport Minister, Mr Radovan Žerjav presented the Transport programme to the European Parliament TRAN Committee on 23 January. There will be an Informal Ministerial Meeting on 6 May at a location a few miles from Ljubljana. The topic for this is likely to be the greening of transport and development of the Transport TENs. A conference titled ‘Towards a more performing European Aviation System’ took place on 22 January in Brussels to consider how the necessary Regulatory framework for aviation in Europe has to be changed, with a clear focus on performance and governance issues. A first European Maritime Day will be held on 19 May and potential topics for the day will be discussed by Working Groups in Brussels during March.

ROAD SAFETY

Work will continue with the European Parliament to reach agreement on infrastructure safety management (13874/06) which is scheduled to have its EP plenary first reading in April. In the Competitiveness Council work will start on a new proposal to revise the requirements for the protection of pedestrians and other vulnerable road users through vehicle design (13895/07). We expect there to be some desire to complete this work and to put this dossier to the Competitiveness Council of 29–30 May following the EP first reading currently scheduled for late April. The Presidency will also take forward the proposed regulation on the type-approval of hydrogen powered vehicles (13927/07).

The Commission is expected to publish a proposal in February/March on the cross-border enforcement of safety controls and sanctions in the field of road safety. Working Group discussions will be taken forward by the Presidency as soon as the draft Directive is published with a view to possible agreement at the June Transport Council.

MARITIME

After an initial discussion at the end of the Portuguese Presidency, Working Group consideration of the two outstanding maritime safety (‘Erika II’) dossiers, flag State (6843/06) and shipowner liability (5907/06), started in January. In parallel, the Presidency will begin informal negotiations with the EP on the five maritime dossiers on which the Council has already reached political agreement, with a view to achieving second reading deals if possible. As you may recall, Member States including the UK have a number of reservations regarding the flag State and Civil Liability proposals and the Government does not consider that either measure, unless significantly altered, is necessary or appropriate.

If the proposed Regulation on passenger rights for persons with reduced mobility in the field of maritime transport is published in time, it is a possible issue for the Slovenians to begin work on in the later stages of their Presidency.

The Commission is expected to issue various documents during 2008 presaged by the new Integrated Maritime Policy document (14651/07 & Adds 1–5). These are listed in the related action plan which is summarised in tabular form at the end of Document 14651/07 Add 2. They include various proposals, communications and reports on a wide range of issues including such diverse matters as integrated governance, surveillance activity, sustainability and maritime research.

RAIL

Picking up from the Portuguese Presidency, work will continue on two dossiers: the Rail Safety Directive and amendment of the Rail Agency regulation (5042/07). There will also be discussions in Working Group of the recent Commission Communication on a freight oriented rail network (14165/07) and a forthcoming Communication on multi-annual contracts between owners and managers of rail infrastructure. Discussions may lead to the adoption of Council Conclusions.
AVIATION

The Presidency is keen for the Commission to advance the forthcoming SESAR Master Plan in order to get a resolution on SESAR endorsed by the June Council. There is also a possibility of Council Conclusions in April on the new Commission Report on Single Sky (which will be the subject of EM 5078/08). They will aim for a second reading deal with the EP on airport charges (5887/07) while recognising the challenges involved. They also hope to make rapid progress on the Regulation on Computerised Reservation Systems (14526/07) which they see as a priority. Negotiations on the second phase of the EU/US aviation agreement (9656/06) are due to start on 15–16 May and it is likely that there will be an event in Slovenia to mark the opening of this. The Commission will be operating under the existing negotiating mandate dating from 2004 and reaffirmed by the Council last year. The Council is also likely to be asked to approve a mandate for the negotiation of a comprehensive aviation agreement with Israel.

Although negotiations on the proposed directive on aviation and emissions trading (5154/07) are being led through the Environment Council, it has been a lunchtime discussion item at two Transport Councils in 2007. However, we understand that the Slovenian Presidency is not going to pursue the second reading negotiations on aviation and emissions trading in its term, instead it will focus on the Review of the EU ETS, the 20% renewables target and the 20% greenhouse gas reduction target.

Domestically, there is still a lot of work to do outside negotiations on aviation and EU ETS, particularly on the administrative requirements of the Directive, which the Commission is to consult on in spring 2008, and preparing the UK position on the proposal to address aviation’s NOx emissions which is due to be published at the end of 2008.

ROAD TRANSPORT

The Presidency intends to take the proposed regulation on road passenger transport (10102/07) to the June Council for political agreement. They will also continue to work on the proposal for a regulation on access to the market in the carriage of goods (10092/07) which they hope to bring to the April or June Council for political agreement, together with the proposed regulation on access to the profession of road transport operator (10125/07). The Presidency has no plans to spend time on the Freight Logistics Action Plan (14266/07).

MULTI-MODAL ISSUES

The Presidency has indicated that they will give the Galileo programme all necessary attention. Working Group discussions are currently taking place on the amended proposal for a Regulation on the further implementation of the programme (13113/07). This covers the programme’s governance, funding and procurement strategy and is being subjected to simultaneous discussion and scrutiny by the Transport Committee of the European Parliament in order to facilitate its speedy adoption.

The hope is that it will be possible to reach a political agreement at the April Transport Council, to be followed later this year by proposals on Galileo’s applications and the access policy for the Public Regulated Service.

More generally, the Presidency will be working towards a mandate for the Commission to open negotiations for a Transport Treaty with the Western Balkans, on the model of the Energy Treaty. This would include regulation of all transport modes with the countries concerned apart from air transport which is already regulated by special agreements.

FUEL/VEHICLES

A number of transport-related items are also on the agenda for discussion in the Environment Council on 3 March and 5 June. These include the proposed Fuel Quality directive (6145/07), which the Presidency hopes to take to the March Environment Council for political agreement with the aim of securing a 1st reading deal with the European Parliament. In view of the limited time available and the issues still to be resolved in the Working Group this looks to us to be optimistic and we would expect that it will slip to the June Council. This may jeopardise a 1st reading agreement as the European Parliament’s Plenary vote is currently scheduled for March.

The new Euro VI proposal for a regulation tightening air quality pollutant emission standards for new HGV and bus engines from 2013 has not yet been presented in the Working Group. Nevertheless the Presidency has provisionally scheduled it for a policy debate in March and political agreement in June. An Explanatory Memorandum is being prepared on the proposal and will be submitted shortly.
Another key dossier in relation to the environment will be the new proposal for a regulation setting performance standards on CO2 emissions from new cars (on which an Explanatory Memorandum 5089/08 will be submitted shortly). This will be an important part of the strategy on tackling carbon dioxide emissions in the transport sector. Whilst the Environment Council will be in the lead on this dossier, we would expect there to be some discussions in the Transport Council as well. The Presidency may also take forward the revised clean vehicle procurement proposal (on which an Explanatory Memorandum will be submitted shortly).

Negotiations will begin on the renewable energy directive, which will include proposals on biofuels, following its publication by the Commission on 23 January.

I hope that this general summary of our expectations is useful. Further information will, of course, be provided to you in the future on the progress of each of these dossiers.

5 February 2008

SUSTAINABLE FUTURE IN GENERAL AND BUSINESS AVIATION (5334/08)

Letter from the Chairman to Jim Fitzpatrick MP, Parliamentary Under Secretary of State, Department for Transport

Thank you for your EM, dated 30 January 2008, which Sub-Committee B considered at its meeting on 18 February 2008.

The Committee has decided to clear the document from scrutiny but noted the issues dealt with by the Commission in the context of its White Paper. We would be grateful if you could keep us informed on the outcome of the discussions in the Council Working Group on 5 February 2008. We are particularly interested to know whether the Commission or the Council are planning to adopt any further actions as a response to the White Paper.

19 February 2008

Letter from Jim Fitzpatrick MP to the Chairman

Thank you for your letter of 19 February concerning Sub-Committee B’s consideration of my Explanatory Memorandum on the above Communication. In clearing the document from scrutiny, the Committee noted the issues dealt with by the Commission in its Communication and requested to be kept informed of the outcome of the subsequent discussions in Council Working Group.

The Council has met in Working Group on several occasions to discuss the Commission’s Communication and develop a set of Conclusions. The UK has taken a full and active part in those discussions. The Conclusions will now be sent to the Transport, Telecommunications and Energy Council on 7 April for Ministerial approval.

Although the Conclusions are generic in nature, all are broadly supportive of the Commission’s Communication. Of particular importance to the UK is the recognition in the Council Conclusions of the nature and composition of the General and Business aviation sector in Europe, largely made up as it is of privately owned aircraft, small and medium sized enterprises or not-for-profit organisations with limited resources to keep up with ongoing regulatory changes. In this respect, the Conclusions stress the need for any future European legislative proposals to be proportionate, taking into account the diversity of the sector’s activities and the different kinds of aircraft involved. Importantly, the UK was able to ensure that the Conclusions also maintained a firm link between proportionality and the maintenance of appropriate standards of safety.

The UK has also welcomed the recognition, in the Conclusions, of the important social and economic benefits that European general and business aviation provides, together with a call for the development of a cost efficient set of essential data on the sector in order to contribute to safety improvements and to provide a better understanding of its value. This takes forward the work carried out by the European Civil Aviation Conference’s (ECAC) Task Force on General Aviation, under chairmanship of a member of the UK Department for Transport, which looked at the current availability of information on general aviation across Member States and developed a model data collection matrix. While the Task Force concluded that mandatory collection of comprehensive data would be likely to breach better regulation and proportionality principles on the basis that a disproportionate burden would be placed on the smaller, sporting end of the sector, the Task Force did encourage the Commission to work with the National Associations across Europe
who already collect a great many statistics from their members on a voluntary basis, in order to establish a European-wide picture of the General aviation sector.

Another key point for the UK was to ensure that the Conclusions recognised the needs of general and business aviation in airport and airspace capacity optimisation initiatives alongside those of other airport and airspace users. The UK was able to successfully amend the text to move away from seeking “guarantees” of adequate access for all users, which may well be unattainable in practice given capacity constraints, to a more realistic, “reflection” of the needs of all users while ensuring the greatest efficiency of the air transport system as a whole.

Finally, with regard to environmental issues, while the Conclusions welcome the Commission’s support for, and promotion of, the European aviation industry, this is tempered by recognition of the need to ensure that general and business aviation ensures its environmental sustainability. Within that overarching objective, the Conclusions call on future European legislation in this field to take account of the specific characteristics of the general and business aviation sector. Further, the Conclusions acknowledge the work already underway, particularly in the field of research, to develop new, more environmentally friendly equipment and encourage the continuation of this work in co-operation with stakeholders.

As with the Commission Communication, the Council Conclusions do not make specific legislative proposals, but do call for the effective implementation of the actions identified. In particular, as noted in my Explanatory Memorandum, the Commission is encouraged to monitor the application of the principle of proportionality in future European legislative proposals.

28 March 2008

SUSTAINABLE POWER GENERATION FROM FOSSIL FUELS (5780/08)

Letter from the Chairman to Malcolm Wicks MP, Minister of State for Energy, Department for Business, Enterprise and Regulatory Reform

Thank you for your Explanatory Memorandum on Carbon Capture and Storage (CCS) demonstration projects. Sub-Committee B considered the document on 3 March 2008 and it was agreed to clear it from scrutiny.

The Committee welcomes the Commission’s approach to this issue and agrees that it is important to provide the necessary impetus to the development of this technology. Should any further, legislative proposals come forward the Committee would be keen to subject them to scrutiny.

The Committee also noted that the inclusion of CCS in the EU ETS means that effective regulation of CCS will be essential to ensure that emissions savings are genuinely secured. This is something the Committee intends to address in more detail at the appropriate time.

4 March 2008

THIRD COUNTRY AUDITORS

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

Thank you for your EM dated 15 February 2008 which Sub-Committee B considered at its meeting on 3 March 2008.

We consider the issues dealt by the draft Decision as proportionate and necessary so we have decided to clear the document from scrutiny.

4 March 2008

URBAN MOBILITY (13278/07)

Letter from the Chairman to the Rt Hon Rosie Winterton MP, Minister of State for Transport, Department for Transport

Sub-Committee B considered your Explanatory Note at its meeting on 12 November 2007 and cleared it from scrutiny.

The Committee would, however, be grateful if a copy of the Government’s response to the consultation launched by this Green Paper could be sent to the Committee for information.

13 November 2007
Letter from the Rt Hon Rosie Winterton MP to the Chairman


The Government has undertaken a full public consultation. We received detailed and helpful representations from a wide range of stakeholders, which were broadly positive towards the Green Paper. The consultation found, however, that there was little support for significant, additional legislation with the majority of UK stakeholders seeking more guidance and best practice dissemination, and to this end the Government is encouraging the Commission to explore wherever possible the options for such measures. The consultation also reflected the concerns expressed in our Explanatory Memorandum, that the Green Paper should not lead to policies that impede local authorities’ ability to manage and implement their own policies with regard to urban transport.

The input from the public consultation has been used to develop the Government response to the European Commission, which was done in close consultation with central departments and the devolved administrations. The response has now been submitted to the Commission. I attach a copy of this response for your information (not printed).30

The response set out some key principles for developing urban transport policy within the EU. Namely, the value in EU-level guidance and best practice dissemination; the need to respect subsidiarity; and the importance of EU-level funding and research in the development of new technologies and ITS applications, such as the CIVITAS programme.

The Commission have indicated that they will be reflecting upon the comments of Member States over the summer and will be bringing forward proposals for community action in the autumn of this year. The Government will, of course, keep your Committee informed concerning any future proposals.

6 April 2008

30 www.dft.gov.uk/consultations/archive/2008/consul551greenurbanmobility/summary
Foreign Affairs, Defence and Development Policy (Sub-Committee C)

AFRICA: EU STRATEGY (9678/07)

Letter from Gareth Thomas MP, Parliamentary Under Secretary of State, Department for International Development, to the Chairman

Thank you for your letter of 24 October 2007 indicating that the Sub-Committee continues to hold the Explanatory Memorandum of 25 July on the EU/Africa Strategy under scrutiny. The Sub-Committee also looked forward to further information on the negotiations for the EU Africa Summit. Following your meeting of 18 October I wrote on 22 October copying the Committee further information. I hope that following this letter and the evidence session on Thursday with my colleague Lord Malloch Brown, Foreign and Commonwealth Office, and Marcus Manuel, Pan Africa Director, DFID, the Committee will be able to lift scrutiny.

The EU Africa Ministerial Troika met on 31 October to discuss the EU Africa Strategic Partnership and approve the draft strategy and action plans in advance of the EU Africa Summit expected on 8 December. Unfortunately the Joint Strategy and Action Plans will not be published until the Summit. However, I attach the information (not printed) publicly available from the Portuguese Presidency which includes highlights from both documents. In the Government’s letter of the 22 October and at the Standing Committee debate on 23 October I laid out the Government’s views.

The Committee also expressed the strong wish that at the Summit the EU should stress to the African side the importance of the issues of human rights and democracy as they related in particular to Zimbabwe, as well as to other countries. The UK continues to press for a substantive discussion of these issues at the Summit.

I hope this information and the discussion on Thursday will be sufficient for you to lift scrutiny, prior to the November General Affairs and External Relations Council. This will show that the Government continues to be actively committed to the EU Africa Strategy.

6 November 2007

AGRICULTURAL DEVELOPMENT IN AFRICA (12190/07)

Letter from Gareth Thomas MP, Parliamentary Under Secretary of State, Department for International Development, to the Chairman

Thank you for your letter of 24 October 2007, on the subject of the European document, “Advancing African Agriculture—Proposal for Continental and Regional Level Cooperation on Agricultural Development in Africa.” (12190/07). You held the document under scrutiny, and commented on the links to protectionism and the need for input from other government departments on the document.

The UK Government strongly believes in reducing agricultural trade distortions in developed countries to enable developing countries to compete on a more level playing field. We are strong advocates of a World Trade Organisation Doha Development Round outcome that sees significant reductions in agricultural trade distortions and of a reformed CAP in Europe.

In December 2005 the Government published, with input from DFID, the UK ‘Vision’ for the future of the CAP. It outlines an agriculture system, achievable within the next 10 to 15 years, which is fundamentally sustainable and an integral part of the European economy. From a development perspective the key aspects of the policy are that it should be:

— internationally competitive without reliance on subsidy or protection;
— environmentally-sensitive, maintaining and enhancing landscape and wildlife and tackling pollution; and
— non-distorting of international trade and the world economy.

While there is increasing recognition in Europe that further reform of the Common Agricultural Policy (CAP) is necessary to meet the challenges of globalisation and the need for economic reform within the EU, the development arguments in favour of CAP reform carry little weight with most of our EU partners and domestic concerns are often paramount. It is therefore difficult to get references to CAP reform into Commission documents with a development focus, such as the Advancing African Agriculture proposal.

We did circulate drafts of the document to BERR and DEFRA colleagues but as there was no specific CAP/trade related text for them to comment on we did not note this in the consultation section of the explanatory memorandum. We will ensure that we are indicating with whom we consult in future memoranda.

I hope this information is helpful. I want to assure you of the Government’s continuing commitment to securing reform of the CAP that contributes to gains for developing countries by reducing the distortions in international agricultural markets, removing subsidies and opening up the EU market.

5 November 2007

BOSNIA AND HERZEGOVINA: STABILISATION AND ASSOCIATION AGREEMENT (SAA)

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

On 24 April, I submitted an Explanatory Memorandum on signature of Bosnia and Herzegovina’s Stabilisation and Association Agreement with the EU. I am writing to provide your Committee with further information on the issue.

As the EM set out, signature of BiH’s Stabilisation and Association Agreement with the EU is dependent upon progress on four key conditions; police reform, co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY), public administration reform and public broadcasting reform.

Police Reform

Of these four conditions police reform has been the key stumbling block. On 22 October 2007, after repeated disagreements, the main party leaders signed the “Mostar Declaration” envisaging a two-stage reform of the country’s policing structures in line with the EU three principles (essentially to depoliticise and centralise control of the police). This declaration was seen as a significant first step and unlocked the initialling of BiH’s Stabilisation and Association Agreement on 4 December 2007.

In December 2007 a Working Group on Police Reform was established and draft legislation was produced. This legislation was adopted by the BiH Parliament on 16 April. High Representative/EU Special Representative Lajcak and the Head of the EU Police Mission, Brigadier Coppola, were asked by the European Commission to provide an assessment of the legislation.

On 16 April Lajcak and Coppola wrote to Enlargement Commissioner Rehn stating that the legislation fully met the objectives of the Mostar Declaration and Action Plan and that in doing so ensured that the EU three principles remained relevant. Lajcak and Coppola concluded that “the necessary steps in terms of implementation of this stage of police reform with regard to the EU’s criteria can be considered as having been fully achieved.” We agree with this assessment.

Co-operation with ICTY

BiH has also made progress in its co-operation with the International Criminal Tribunal for the Former Yugoslavia (ICTY). In August 2007, Chief Prosecutor Carla Del Ponte reported that BiH’s co-operation with ICTY had progressed and remained “satisfactory”. She further stated that the government and police of the Republika Srpska had “confirmed its commitment to full co-operation through extensive efforts aimed at targeting fugitive support networks” and noted that the arrest of Zdravko Tolimir in June 2007 was demonstrative of this renewed commitment. The current Chief Prosecutor, Serge Brammertz, continues to consider BiH co-operation “satisfactory.”

The European Commission has further reported that access to witnesses and archives has improved substantially and that BiH authorities are supporting EU/NATO operations to find the remaining ICTY fugitives (including through the implementation of asset freezes), none of whom are believed to be in BiH. On the basis of these reports, we agree with the Commission’s assessment that BiH’s co-operation with ICTY is sufficient to allow for signature of BiH’s SAA.
PUBLIC ADMINISTRATION REFORM

Progress has also been made on Public Administration reform. A co-ordination office was established in 2005, this office is now operational with a full staff and an increased budget. A number of key reforms have been implemented and the Commission has reported to the Council that BiH has the public administration capacity necessary to implement its Stabilisation and Association Agreement.

PUBLIC BROADCASTING REFORM

On Public Broadcasting reform, state-level laws were put in place in 2005 regarding the treatment by the media of the three official languages (Bosnian, Croatian and Serbian). The Council of Europe and the European Commission considered this legislation to be in line with best European practice. This law has yet to be adopted in the Federation of Bosnia and Herzegovina (FBiH) due to a veto by the Bosnian Croats on the ground of Vital National Interest. The BiH Constitutional Court is now considering this claim in line with the entity’s democratic process. Overall the Commission’s assessment is that the professionalism of the BiH media has improved significantly in the last few years.

Taking into account this progress we support the assessment of HR/EUSR Lajčak and the Commission that Bosnia and Herzegovina has made sufficient progress to satisfy the four pre-conditions and allow for signature of its Stabilisation and Association Agreement.

The Stabilisation and Association Agreement is due to be discussed at the 29 April GAERC and it is likely the Council will express a readiness to sign BiH’s SAA at a future date. I hope that having further outlined the progress made on these key reforms, the Committee will understand the rationale for signing BiH’s SAA at a forthcoming date.

28 April 2008

CHAD AND THE CENTRAL AFRICAN REPUBLIC: EU MILITARY MISSION

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

Thank you for your letter of 18 October 2007. I was grateful for the Committee’s speedy clearance of the Joint Action, which was finally agreed by the General Affairs and External Relations Council on 15 October.

In my letter of 23 October to Michael Connarty, (copied to you and attached here for ease of reference), I provided additional and updated information on the planned operation, particularly on financing and terms of reference, that should help address the key issues you have raised. On command arrangements, I can confirm that since I sent you the Explanatory Memorandum, Ireland has provided the Operation Commander, whilst France will continue to provide the Force Commander. This is a positive development, which will help to underline publicly the multinational nature of the force.

In addition to adopting the Joint Action, the GAERC on 15 October agreed comprehensive conclusions on Chad/Central African Republic/Sudan (also attached) which reaffirmed publicly the EU’s intention to conduct the one-year bridging operation, as well as making clear how this operation fits squarely within the wider regional strategy. The newly appointed Operation Commander, Lt Gen Nash, has now had discussions with both the Political and Security and Military Committees in Brussels. He has reported on the risks and challenges the mission faces, in particular the vast distances involved—posing challenges in terms of logistics and tactical airlift—and the need to sustain the force’s impartiality in the eyes of local Chadians. The first formal force generation conference is due to take place on 9 November.

7 November 2007

Letter from Jim Murphy MP to the Chairman

I am writing to let your Committee know of a probable delay to the plans to launch the EU military mission to Chad and the Central African Republic (EUFOR Tchad/RCA) as proposed in the Joint Action adopted by the General Affairs and External Relations Council on 15 October and that things could begin to move faster at short notice.

4 Correspondence with Ministers, 11th Report of Session, HL Paper 92, p 114.
The Presidency still hopes that it will be possible to take the Council decision and launch the mission this month. The Operation Commander, Lt Gen Nash, is in the process of generating the required military resources from among Member States. Despite three force generation conferences, it has not yet been possible to identify all of the mission critical elements of the force. Shortfalls remain particularly in medical assets and helicopters. We are working with our EU partners to address these shortcomings, but until the force generation process has been completed, the Council will be unable to consider a decision to launch the mission. Earlier planning documents suggested that EUFOR would reach its Initial Operating Capacity (IOC) by the end of 2007. The problems with force generation make this unlikely. A more realistic estimate would be for IOC to be reached in the early part of 2008.

It is possible that we will receive a draft of the Council Decision at very short notice. I would like to reassure the Committee that we will submit an Explanatory Memorandum on the document at the earliest opportunity. Given that the Council Decision is likely only to confirm the content of the Joint Action, which your Committee has already cleared from scrutiny, and given that we would not want to delay deployment of the force, I hope your Committee will understand if I agree to the Council Decision before parliamentary scrutiny has been completed.

A number of other EU documents could also be adopted alongside the Council Decision to launch the mission:

- a Council Decision on a Status of Forces Agreement. This agreement with the host countries (Chad and the Central African Republic) and countries through which the troops will travel (Cameroon) will need to be adopted before the mission is deployed.

- Council Decisions on Participation Agreements. Any non-EU states which agree to participate in the mission will need to sign Participation Agreements. Again, these will need to be adopted before troops can be deployed.

For the same reasons, I hope that your Committee will understand if I agree to these Council Decisions before parliamentary scrutiny has been completed.

4 December 2007

Letter from Jim Murphy MP to the Chairman

I am writing to update you on the EU military mission to Chad and the Central African Republic (EUFOR Tchad/RCA). At the General Affairs and External Relations Council on 28 January, EU Foreign Ministers agreed to launch the mission. They also agreed the following related documents:


As anticipated in my letter of 4 December, I was unable to send an Explanatory Memorandum and the draft documents to your Committee in time for further scrutiny.

As you will recall, I anticipated in my letter that the Council Decision was likely only to confirm the content of the Joint Action which your Committee had already cleared from scrutiny. That being the case, we had no wish to delay the deployment of EUFOR further.


30 January 2008

Letter from the Chairman to Jim Murphy MP

Thank you for your letter of 30 January updating us on the launch of the above military mission, and for your previous letter of 4 December. Sub-Committee C agreed at their meeting on 10 January that you might need to make a decision on the launch before the parliamentary scrutiny process had been completed. At their meeting on 7 February Members noted your letter of 30 January explaining that the Decision had been agreed at the 28 January GAERC and cleared the launch Decision and the two associated status of forces Decisions from scrutiny.
Members also noted at the 7 February meeting that the deployment of the mission had had to be delayed owing to developments on the ground in Chad. They were grateful for the offer from your staff to brief the Sub-Committee on the situation and would like to call on them perhaps at a later stage, depending on future developments.

At the same 7 February session the Russian Ambassador, while giving evidence on the EU and Russia, mentioned that Russia was in negotiations with a view to supplying transport helicopters for the EU mission in Chad. In view of the information which Lord Malloch-Brown gave us at the evidence session on 8 November 2007 about the world-wide shortage of suitable helicopters for such missions, we would be grateful to be kept informed of these negotiations with Russia.

19 February 2008

Letter from Jim Murphy MP to the Chairman

Thank you for your letter of 19 February.

I note the comments that the Russian Ambassador made on the provision of transport helicopters for the EU operation in Chad. I can confirm that Russia has been in consultation with the EU Council Secretariat regarding this proposal, and confirm too that in principle we would very much welcome a continued and increased Russian support for EU, NATO, UN and other international operations, including through the contribution of helicopters, ground forces and other capabilities. I will update the Committees on any progress that is made in relevant negotiations.

We continue to work with all of our international partners on measures to address the global helicopter shortage. The Committee might also be interested to know that the UK has been the primary driving force in promoting NATO initiatives to identify means to generate and mobilise increased helicopter capability among member states.

9 March 2008

CLIMATE CHANGE AND INTERNATIONAL SECURITY

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

Sub-Committee C considered this document at its meeting on the 3 April 2008 and decided to hold it under scrutiny.

The Sub-Committee expressed full support for the analysis set out in the report and for the international leadership demonstrated by the Government on climate change issues. We look forward to being kept fully informed of formal and informal discussions on the recommendations for follow-up which are expected to be submitted to the December 2008 European Council. In the meantime, we would be grateful for clarification from the Government on the following points.

The report states (p.9) that “the active role of the EU in the international climate change negotiations is vital and must continue… In the EU’s response, special consideration needs to be given to… what the implications mean for the EU’s long-term relations with Russia”. What is the Government’s view of what the implications of climate change are for the EU’s long-term relations with Russia? Are the current EU-Russian institutional arrangements for dialogue and cooperation on climate change adequate or do they need to be enhanced?

The report has significant implications for development cooperation policy at the national, European and international levels, matters on which DFID take the lead within the UK Government. We would therefore be grateful if you could confirm that DFID was consulted in the preparation of your Explanatory Memorandum on this report, and that it will be closely and fully involved in the discussions on any follow-up recommendations to be discussed in Council.

We note that your Explanatory Memorandum makes no mention of the European Security Strategy. In the context of the planned review of the Strategy during the course of this year, we would be interested to know what the relationship will be between the Strategy and the recommendations on climate change. We would also welcome assurances that the European Commission will be fully associated and consulted as part of the deliberations in Council on the recommendations.

3 April 2008
Letter from Jim Murphy MP to the Chairman

I am responding to your letter of 3 April on the points raised by Sub-Committee C in its initial scrutiny of the above paper.

I very much welcome the interest of the Select Committee in this issue. It is vitally important for the security and prosperity of our citizens that we respond effectively to climate change.

You raise the implications of climate change for the EU’s long-term relations with Russia. Climate change will indeed have an impact on our relations. The EU’s ambitious targets to reduce greenhouse gas emissions agreed at last year’s Spring European Council will drive a restructuring of Member States’ energy economies. This will have significant implications for the EU’s energy partners, including Russia. The effects will be complex, and it is important that we share our thinking with partners like Russia as we implement the ambitious package agreed last year. In addition, as we transit to low-carbon ourselves, we will be developing technologies which may eventually be interesting for Russia’s own response to climate change. It is therefore essential that EU/Russia dialogue on climate and energy helps us understand and take account of each other’s interests. We also need to work with Russia bilaterally and through the EU and other international organisations on securing an equitable and ambitious post-2012 agreement under the UNFCCC (United Nations Framework Convention on Climate Change) process. There are a number of formal processes in which this dialogue can take place: the current EU/Russia Partnership and Cooperation Agreement (PCA), and the draft negotiating mandate for a successor to the PCA, which also covers climate change.

In addition, the draft PCA successor mandate covers conflict prevention and resolution and security co-operation between the EU and Russia: this could include conflicts caused, worsened or prolonged by the effects of climate change.

The EU has also instituted an Energy Dialogue with Russia, one of the main focuses of which, is the promotion of energy efficiency in Russia, based on the two sides’ common interest in reducing the energy intensity of Russia’s GDP. Achieving progress in this area would significantly enhance Russia’s contribution to combating global climate change.

With regard to international development, there is a real risk that much of the economic and social progress developing countries have made in recent years could be wiped out by climate impacts, pushing greater numbers of people into spiralling poverty. DFID has been very active in following up the issues highlighted in the above report and I can confirm that DFID was consulted in the preparation of the Explanatory Memorandum. My officials continue to be in regular contact with their DFID counterparts (as with those in other key Government departments) and we will ensure DFID is closely involved in taking forward follow-up recommendations to be discussed in the Council.

On the European Security Strategy (ESS), climate change will certainly be one of the areas addressed in forthcoming ESS work as it did not have sufficient prominence in the 2003 Strategy. We will want the forthcoming examination of the implementation of the ESS—and, as appropriate, proposals to complement it—to take account of the security dimension of climate change. This point is made in the High Representative’s report.

In conclusion, the FCO will be following progress in this area very closely and will continue to liaise with the Solana Cabinet and the External Relations Directorate of the European Commission to ensure that the recommendations produced for the December Council take account of our priorities and offer the best possible outcome for future action. We very much welcome your involvement in achieving this aim, and would encourage parliamentary committees to include discussion on climate change as a security issue whenever they travel overseas.

15 April 2008

DEFENCE-RELATED PRODUCTS: TERMS AND CONDITIONS OF TRANSFER (16534/07)

Letter from the Chairman to Malcolm Wicks MP, Minister of State for Energy, Department for Business, Enterprise and Regulatory Reform

Thank you for your Explanatory Memorandum of 21 January on the above subject.

Sub-Committee C considered the documents at their meeting on 28 February and decided to hold them under scrutiny. Members asked that you keep them fully informed of developments and agreed that they might wish to ask for evidence to be taken on the subject, including from the Government, before clearing the documents from scrutiny.

3 March 2008
DEVELOPMENT POLICY AND EXTERNAL ASSISTANCE 2006 (11141/07)

Letter from Gareth Thomas MP, Parliamentary Under Secretary of State, Department for International Development, to the Chairman

Thank you for your letter of 29 October 2007, on the subject of the 2007 Annual Report on the European Community’s Development Policy and the Implementation of External Assistance (11141/07). Your committee cleared the document from scrutiny, but asked for further information. You are concerned “at the very brief analysis of the EC’s work in middle-income countries; that a greater portion of aid should be spent in low-income countries; that the analysis under some sub-headings related to the MDGs are not uniformly strong; and that baseline data on the Paris Declaration on Aid effectiveness have not yet been reported.” I attach the Council Conclusions (which are marked “draft”, but are in fact the agreed version), which summarise the discussions of the Council (not printed).

Your concern about spending in low income countries is welcome. As you will be aware, evidence shows that aid spent in low income countries has a greater propensity to reduce poverty than that in middle income countries. You will also recall that the financial perspectives have largely fixed the balance of expenditure between low and middle income countries until 2013. As we cannot influence the breakdown of expenditure, we should encourage better use of aid in middle income countries, and better analysis and reporting of the impacts of that expenditure.

The UK works with the Commission in a number of middle income countries to encourage increasing effectiveness and efficiency of EC programmes including in the European Neighbourhood and Western Balkans region. Our focus has been on strengthening the sustainable development and poverty reduction focus of the EC’s Country and Regional Strategies and Annual Action Programmes and ensuring that they are aligned with partner country priorities. We are also encouraging the Commission to build up the capacity of its delegations both to enhance its own effectiveness and to support donor co-ordination. In the European Neighbourhood, we are encouraging more transparent and objective resource allocation and have begun a dialogue on the use of conflict analysis and application of the principle of conflict sensitivity to EU policy and programming. We hope that these efforts will enhance the impact of expenditure upon poverty reduction.

We are not alone in our concern about spending in middle income countries. The Conclusions encourage the Commission to develop its explanation on how development cooperation in middle income countries contributes to reducing poverty, and to report this in future Annual Reports.

The Council agreed that the Commission should make a greater effort to explain how its work will contribute to achievement of the MDGs. This is stated in the sixth paragraph of the Council Conclusions, “The Council takes note of the specific section describing the Community’s work towards the achievement of the Millennium Development Goals (MDGs) and calls on the Commission to further develop this analysis.”

As I noted in the Explanatory Memorandum, I was disappointed to see that the Paris Declaration baseline data were not incorporated into the Annual Report. The next progress report will be compiled in the early part of next year. The OECD reports that these data will be available at the end of the first quarter next year. I am therefore hopeful that these data will be incorporated in the next annual report. Other Member States agreed with this ambition, and although the wording of the Council Conclusions is slightly ambiguous, it sends a clear signal to the Commission as to the strength of our interest, “The Council recalls the four additional commitments on improving aid delivery made by the EU in relation to the Paris Declaration and suggests the Commission to report on these four pledges in the next Annual Report.” You might be interested to know that after this current exercise, there will be no additional report until after 2010, at which time the targets for progress against the agreed indicators will be assessed.

7 December 2007

DISASTER RESPONSE CAPACITY (7562/08)

Letter from Tom Watson MP, Parliamentary Secretary, Cabinet Office, to the Chairman

The European Commission has issued a Communication on reinforcing the EU’s capacity to respond to disasters.

I enclose a draft Explanatory Memorandum (not printed) on the Communication’s proposals. This has been prepared in consultation with Government Departments and the Devolved Administrations.

3 Correspondence with Ministers, 11th Report of Session 2008–09, HL Paper 92, p 128.
The Slovenian Presidency envisage Council Conclusions for June 2008. This timetable may enable Parliamentary Scrutiny of the Green Paper to inform the Government’s approach to discussions on the Communication and on any arising draft Conclusions before this deadline.

8 April 2008

ENERGY COOPERATION BETWEEN AFRICA AND EUROPE

Letter from Gareth Thomas MP, Minister for Trade and Consumer Affairs, Department for International Development/Department for Business, Enterprise and Regulatory Reform to the Chairman

Thank you for your letter of 24 October about Energy Cooperation between Africa and Europe. You ask me to confirm whether the Government agrees “with the EU’s avoidance of GDP per capita [your underlining] growth [of gross national income] as a method of measurement for progress towards meeting the MDGs.”

First, let me restate my view that the Committee is correct to say that per capita growth matters for the achievement of the Millennium Development Goals (MDGs). Any serious statistically accurate measurement of the effects of economic growth upon poverty and achievement of the MDGs will certainly need to take into account population growth, so per capita income is a better measure than income.

I agree that the European Commission does not always use the most technically accurate indicator. However, I cannot agree that they generally avoid using this measure. For example, in the Annual Report on the European Community’s development policy and the implementation of external assistance in 2006 the Commission specifically refers to population growth and its impact upon economic growth and poverty. They note, in section 2.6.1: “The Latin American and Caribbean economy grew by 5.3%, the fourth consecutive year of economic growth and the third year of growth of over 4%. The region’s per capita [their italics] income is estimated to have risen by about 3.8%, while the unemployment rate fell to 8.7% on the basis of the ECLAC (UN Economic Commission for Latin America and the Caribbean) preliminary analysis. However, even if there has been a slight decrease, poverty rates remain too high at over 40%.”

As I noted in my last letter to you, in some cases simplified terminology is used, at the risk of accuracy, in order to communicate messages clearly, or because there are no data available which would merit the use of a more accurate term.

Please be assured that the Government will continue to use its influence to ensure that the most appropriate term is used, taking into account the availability of data and the audience.

9 January 2008

ESDP CIVILIAN HEADLINE GOAL 2010

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

At the November General Affairs and External Relations Council, Ministers will adopt new guidance on the future development of EU civil crisis management missions, the Civilian Headline Goal 2010. This will not entail new commitments or financial resources but will usefully re-orientate the EU’s civilian crisis management capability development.

Civilian Headline Goal 2008 was dominated by personnel targets to meet theoretical scenarios whereas Civilian Headline Goal 2010 will be operationally-focused. The planning and conduct enablers for civilian missions will be addressed, including by setting up a robust process to identify and learn lessons from civilian missions.

Helpfully, a significant portion of the Civilian Headline Goal 2010 will focus on improving the coherent deployment of civilian missions with other crisis management tools including military and development, including those of other international organisations and Non Government Organisations. Towards the end of Civilian Headline Goal 2010, there will be a stock-taking event on civilian and military European Security and Defence Policy capabilities, as well as capabilities available to the European Community.

During Civilian Headline Goal 2010, Member States will be asked to give an indication of their potential availability to contribute to civilian missions, as they were under Civilian Headline Goal 2008. The impact of the missions is largely dependent on their personnel and so the Civilian Headline Goal 2010 will seek to achieve qualitative improvements, including through better targeted training.

These strands of work will contribute to the overall objective of improving the EU’s civilian capability to respond effectively to crisis management tasks. In particular, the Civilian Headline Goal 2010 should help to ensure that the EU can conduct crisis management, in line with the European Security Strategy, by developing civilian crisis management capabilities of high quality, with the support functions and equipment required in a short time-span and in sufficient quantity. The ambitions the Civilian Headline Goal 2010 will set out are:

- Sufficient numbers of well-qualified personnel are available across the civilian European Security and Defence Policy priority areas and for mission support, to enable the EU to establish a coherent civilian presence on the ground where crisis situations require it to do so;
- European Security and Defence Policy capabilities such as planning and conduct capabilities, equipment, procedures, training and concepts are developed and strengthened according to need. One of the results will be that missions have adequate equipment and logistics and other enabling capabilities, including for effective procurement procedures;
- The EU is able to use all its available means, including civilian and military European Security and Defence Policy, European Community instruments and synergies with the third pillar, to respond coherently to the whole spectrum of crisis management tasks;
- The development of civilian capabilities is given increased political visibility at EU as well as Member States’ level;
- The EU strengthens its co-ordination and co-operation with external actors as appropriate.

Ministers will continue to discuss civilian capability development each November at the General Affairs and External Relations Council. They will discuss an annual Report on Civilian European Security and Defence Policy Preparedness, which will include assessments of progress in the coherent use of the EU’s crisis management tools and of the capacity of the EU civilian crisis management structures to plan and conduct missions, including on security, procurement and finance.

At the November General Affairs and External Relations Council, Ministers will approve the Civilian Headline Goal along with a Ministerial Declaration on Civilian Capability Development that will also cover a Report on the completed Civilian Headline Goal 2008. I shall forward the complete set when they are agreed.

7 November 2007

Letter from the Chairman to Jim Murphy MP

Sub-Committee C considered this document at its meeting on 31 January 2008 and cleared it from scrutiny.

The Sub-Committee would be grateful for further information on the Civilian Headline Goal. In his recent speech at the Chamber of Commerce in Delhi on 21 January 2008, the Prime Minister set out proposals for strengthening the ability of the international community to respond with civilian forces, including police and judges, to situations of instability. How do these proposals relate to the strengthening of capacities at EU level?

Could you also provide us with information about the preparedness and training of civilians which the UK will be making available to help achieve the EU Civilian Headline Goal 2010. How will the Government make sure that these civilians are fully equipped, trained and maintained at a sufficient level of preparedness?

19 February 2008

ESDP: RECENT DEVELOPMENTS

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

I am writing to update you on recent developments in European Security and Defence Policy (ESDP) missions.

Kosovo

The European Council discussed Kosovo on 14 December and underlined the EU’s readiness to play a leading role in strengthening stability in the region and in implementing a settlement defining Kosovo’s future status. The Council stated the EU’s readiness to assist Kosovo in the path towards sustainable stability, including by an ESDP mission and a contribution to an international civilian office as part of the international presences.

European Heads of State and Government tasked the EU’s representative for the Common Foreign and Security Policy, Javier Solana, to prepare the mission in discussion with the responsible authorities in Kosovo and the United Nations, and Foreign Ministers will return to the issue in the General Affairs and External Relations Council.
Planning for the ESDP mission and international civilian office continues on the ground. Roy Reeve now leads the Planning Team for the ESDP mission. He previously headed the OSCE missions in Georgia and Armenia as a British secondee. I shall of course submit Explanatory Memoranda when the draft Joint Actions are circulated.

CIVILIAN HEADLINE GOAL

Following my letter of 7 November on the Civilian Headline Goal, I attach the complete set of agreed Civilian Headline Goal papers (not printed). I am also submitting an Explanatory Memorandum (not printed) on the Goal itself.

GUINEA-BISSAU

The report of the joint Council/Commission fact-finding mission to Guinea-Bissau, which issued in November, recommended that the EU launch an ESDP mission to provide strategic advice to the local authorities on defence, police and—in conjunction with the European Commission—judicial and penitentiary reform.

The EU’s interest in intervening to assist security sector reform in Guinea-Bissau was prompted by the country’s increasing position as a transit point for drugs being trafficked from Latin America to Europe. There is general support for the EU’s proposals from the authorities in Bissau, who lack the capacity and structures to deal with the problems caused directly and indirectly by the influx of drugs and organised crime to the country.

The mission would comprise around 15 experts in the various fields. Discussions in Brussels working groups have largely focussed on the proposed mission’s command chain, with agreement having now been reached for this to be a civilian lead, due to the civilian nature of the proposed tasks. It is envisaged that the mission will launch in spring 2008.

I also expect to submit Explanatory Memoranda in the spring on the extension of financing for the EU policing missions in the Occupied Palestinian Territories (EUPOL COPPS) and in Afghanistan (EUPOL Afghanistan) beyond February and March respectively. I will continue to ensure that you are alerted to preparations for ESDP activity at an early opportunity.

18 December 2007

EU FOREIGN POLICY EVIDENCE SESSION FOLLOW-UP

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

When I gave evidence to Sub-Committee C on 23 January on European Union Foreign Policy, I agreed to correspond on two points.

Lord Anderson raised the issue of Syria and its regional policies. I said that I would consult my colleague, Dr Howells, Minister of State with responsibility for the Middle East.

The UK remains seriously concerned about the role that Syria is playing in Lebanon and the broader region. Syria’s attendance at Annapolis and the efforts they have made to build their relationship with the Iraqi government show some flexibility in their approach. However, we judge there is a great deal more Syria could do to improve its regional policies.

Syria must play a constructive part in resolving the current political impasse in Lebanon, in the interests of all communities in Lebanon. Syria also needs to meet its international commitments as set out in a range of UN Security Council Resolutions. This means normalising relations as well as stemming the flow of weapons to Hizballah. Syria also continues to host the leadership of Hamas and Palestinian Islamic Jihad in Damascus. In addition, despite some progress, foreign fighters continue to transit Syria on their way to Iraq: a trend which fuels violence in Iraq and creates a threat to Syria itself.

Our EU partners share many of our concerns about Syria. One area that we work together particularly closely on is human rights. In past months, we have seen a worrying deterioration in the human rights situation in Syria, with activists being detained simply for holding a meeting calling for greater democratic rights. The use of torture also remains a serious concern, and there are several reports of suspects dying during interrogation. The British Embassy in Damascus, working with other EU missions, continues to press the Syrians to improve conditions in general, as well to raise individual cases of concern. In addition, the EU Presidency made a statement on 1 February 2008 condemning the recent deterioration in the situation.
I also agreed to follow up Lord Hannay’s question on Africa with more detail on the EU’s approach to the human rights situation in Zimbabwe.

The 2007 EU Annual Report on Human Rights noted that the dire human rights situation in Zimbabwe had continued to deteriorate, with brutal treatment of opposition figures, human rights activists, and ordinary citizens exercising their right to freedom of expression, association and assembly.

The EU closely monitors and takes appropriate action on human rights violations in Zimbabwe, most recently making a demarche to the Zimbabwe Government on 24 January. Under the joint EU-Africa Strategy and Action Plan, agreed at the EU/Africa Summit in December 2007, the Government of Zimbabwe has an obligation to protect human rights.

Since 2002 the EU’s targeted measures on Zimbabwe have underlined its concern at the appalling human rights situation there. Last year they were strengthened with two new names of human rights abusers added to the list of those subject to a visa ban and assets freeze. Those measures will be maintained and we will press for them to be strengthened until there is an improvement in governance and human rights in Zimbabwe.

13 February 2008

EU RESPONSE TO SITUATIONS OF FRAGILITY: ENGAGING IN DIFFICULT ENVIRONMENTS FOR SUSTAINABLE DEVELOPMENT, STABILITY AND PEACE (14356/07)

Letter from the Chairman to Gareth Thomas MP, Parliamentary Under Secretary of State, Department for International Development

Sub-Committee C considered this document at its meeting on 8 November 2007 and cleared it from scrutiny. The Sub-Committee expressed full support for the objectives of the Communication, which as you explained in your Explanatory Memorandum (EM) is fully in line with the relevant DFID and OECD guidelines.

Having conducted an inquiry into the Commission Communication “Europe in the World” (48th Report of Session 2005-06), we very much support the Government’s desire to improve coordination and coherence between the Council and Commission secretariats (paragraph 17 of your EM) and to address the human resources issues raised. We would be interested to receive some additional details about where the Government considers current staffing and training to be lacking and what specific measures they will be bringing forward to address these.

Our attention was drawn to two of the specific Commission proposals. Firstly, the Commission would like to facilitate the establishment of ad hoc Country and Thematic Teams, involving the Council Secretariat and Member States. We agree with the Commission that such teams have the potential to improve joint planning and analysis, but their proposed structure and functioning are not clearly set out. We would find it helpful if you could provide us with some further information on this proposal if it is available, including your views on its advantages and limitations.

Secondly, the Commission makes proposals for more coherent and coordinated action at country level. The Committee welcomes these ideas, but we would be grateful for clarification on how the proposed EU coordination will fit in with the already well-established UN-led coordination mechanisms at country level. We hope that the EU will seek to complement, not duplicate, these mechanisms. In this respect, we welcome the Commission’s intention to strengthen cooperation with the United Nations and other multilateral actors dealing with situations of fragility.

15 November 2007

Letter from Gareth Thomas MP to the Chairman

Your Committee recently considered the Communication “Towards an EU response to situations of fragility—engaging in difficult environments for sustainable development, stability and peace” (14356-07). You cleared the document from scrutiny, but asked for clarification on three issues: specific training and staffing that might be required so that the EU is better equipped to work in fragile situations; the structure, function, advantages and limitations of proposed Country and Thematic Teams and; the Commission’s proposals for coherent and co-ordinated action at the country level, and particularly their relationship with UN mechanisms.

I will address each of these issues in turn, beginning with staffing and training. There is broad consensus among donors that working effectively in fragile states requires staff at field level who are equipped to deal with the challenging working environment, both personally and professionally. OECD donors (including the European
Commission) recognised this in their April 2007 policy commitment—attached to the DAC principles on fragile states and situations—and promised to “reconsider[ing] our field presence and skills inventory, the speed of our response, and whether we have the right incentives to attract people to work in fragile states. In particular, it is essential that staff at field level have sufficient understanding and expertise about the conflict dynamics in fragile situations, and the appropriate instruments to address the extreme development challenges facing fragile states.”

With regard to the Commission in particular, the 2007 DAC Peer Review found that there was insufficient expertise on conflict sensitivity and a lack of coherent support for officials both in Brussels and in the field. The Review recommended a stronger role for thematic support units on conflict and fragility in Brussels, staffed by those with relevant policy and operational expertise. We will encourage the Commission to identify and carry out appropriate training.

In order to promote greater coherence there needs to be a greater collaborative working culture within the Commission services and between the Commission and the General Secretariat of the Council. Joint training or the secondment of staff between these services would be a helpful start.

Secondly, as you note, the proposed structure and functioning of the Country and Thematic Teams are not clearly set out in the Commission’s Communication. These will be decided in the coming weeks by the Commission in coordination with Member States. Country teams meetings already exist within the Commission. Draft Country Strategy Papers (CSPs) are presented, finalised and reviewed at these meetings. We anticipate that the Commission will invite Member States and Council services to take part in these meetings. It will be important to ensure that discussion is substantive and not limited to information exchange so these country teams provide a forum for strategic dialogue about EU policy and programmes in a particular country across all the relevant actors.

The Commission is also likely to pilot “integrated missions” in a number of fragile states. This has the potential to significantly improve coherence between Commission services and Council activities. The design of these “integrated missions” is at a very early stage.

For Thematic Teams, we anticipate that the Commission will choose themes requiring collaboration across a number of services and with Member States. One example could be methods of addressing the gap between humanitarian relief and longer term development programmes.

Another area could be budget support. We will work with the Commission to ensure that the topics chosen and the structure of the team will translate into operational or policy decisions.

Finally, you wanted to make sure that proposed EU coordination mechanisms fitted in with already well-established UN-led coordination mechanisms at country level and hoped that the EU will seek to complement, not duplicate, these mechanisms. There is a consensus within the EU on the need to increase coordination and the coherence of the EU’s response in fragile situations. But coordination between the Commission and Member States in the field does not mean that the Commission Delegation will seek to be the lead international donor in all fragile situations. In cases where there are already well-established UN-led coordination mechanisms, a better coordinated EU should indeed seek to complement, not duplicate these mechanisms. A pragmatic approach is needed in each situation to determine which donor is the best placed to lead donors’ coordination.

10 December 2007

EU-RUSSIA INQUIRY

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

I understand that this week Sub-Committee C is considering which evidence to include in your forthcoming report on relations between the EU and Russia. I wanted to take this opportunity to make a few observations on the evidence session that the Committee held on 7 February with His Excellency Yuri Fedotov, the Russian Federation’s Ambassador to the UK.

EU-RUSSIA RELATIONS

There are many areas on which I agree with the Ambassador. He characterises the relationship between the EU and Russia as one of interdependency. That is exactly how we see it. This is not an arcane point: that interdependency lies behind our wish for a strong, comprehensive partnership between Russia and the EU. I welcome the Ambassador’s continued commitment to a replacement to the current Partnership and Cooperation Agreement. We want that too.
I welcome his view that the new agreement will be legally binding. That is extremely important. And I welcome his saying that he wants the EU and Russia to cooperate on counter-terrorism, though I cannot but point out that Russia has suspended counter-terrorism co-operation with the UK. (It is not true, as he claims, that the UK has suspended co-operation. We co-operate with a range of Russian agencies in international fora such as the G8 Roma-Lyon Group. Moreover, were we to become aware of a likely terrorist attack on Russia or Russians, we would inform the Russian government. I hope Russia would do the same).

**LITVINENKO**

Overall I am pleased that the Ambassador sees partnership as a necessary dimension of a successful Russian foreign policy. Equally, a partnership with Russia is of crucial importance to the EU. But partnerships rely on trust and mutual confidence. And it is on this point that my views diverge from those of the Ambassador. He says that issues such as the Litvinenko case are bilateral problems and not matters for the EU. But there were very sound reasons why the EU saw the situation very differently. Russia’s failure to co-operate constructively on the case raised wider concerns among EU member states about Russia’s approach to judicial co-operation and the rule of law. The case, you will remember, was immensely serious: a British citizen murdered in an EU capital, with hundreds of citizens from 18 EU countries put at risk of radiation poisoning. It is no wonder the EU reacted so firmly.

**BRITISH COUNCIL**

Similarly serious concerns underlay the EU’s public criticism of Russia over its treatment of the British Council. The Ambassador confirms explicitly that Russia’s assault was related to the Litvinenko case. I welcome his candour. But I am sure your Committee shared my astonishment that Russia was linking unrelated areas of business, thereby damaging cultural and educational partnerships built up over many years and compounding one failure to uphold the rule of law with another. Mr Fedotov says that the British Council’s activities lacked a firm legal foundation and that the 1994 agreement only mentioned the possibility of opening cultural centres, and that these needed a special additional agreement. That is wrong. The 1994 agreement commits each party to encouraging the establishment, in its territory of cultural, education and information centres of the other party. The agreement does say that the activities of such centres may be the subject of a separate intergovernmental agreement. But this is not a requirement. That is why Russia’s attacks on the British Council are illegal.

Difficulties in developing cultural relations with Russia are not confined to the British Council. On 8 February, the Russian authorities forced the European University in St Petersburg to suspend its operations, citing fire regulations. This followed a visit by tax inspectors to one of the university’s European Commission-funded projects. The project in question had been providing courses, training and publications on election monitoring.

I should point out that the Ambassador observed that Russia does not have cultural centres in the UK. But this is not for any impediment on our part. We would welcome the establishment of Russian cultural centres in the UK, as provided for by the terms of the 1994 Agreement.

**VISAS**

The Ambassador is simply wrong when he says that our visa regime is impeding people-to-people contacts. More Russians than ever are receiving visas to the UK. The visa measures announced by the Foreign Secretary in July 2007 in response to Russia’s failure to co-operate on the Litvinenko case only affect Russian Government officials. No further visa restrictions have been imposed since those measures were introduced. Indeed, we are going out of our way to improve our visa service to Russian citizens. Business travellers enjoy an express visa service. And an online application service will start operating later this month to speed up the visa application process.

But even if this were not so, we could not accept the Russian proposal that we resume talks with Russia on visa facilitation in return for resuming negotiations on a Cultural Centres Agreement that might let the British Council reopen in St Petersburg and Yekaterinburg. I am sure your Committee would be astonished if we accepted the Russian linkage between the two issues.

**Kosovo**

Ambassador Fedotov also discussed Kosovo in some depth. In what will be an important week for Kosovo’s future, I should not let this opportunity pass to make some remarks on the Ambassador’s points. He suggests that Russia is not opposed to Kosovo’s independence per se, but to the fact that it will be imposed on Serbia against its will. He also says that the negotiations under the Troika showed signs that an agreement between Belgrade and Pristina might be within reach. This is at odds with our assessment, which tallies with the clear
view of Ambassador Ischinger, the EU representative in the Troika. Ambassador Ischinger believes that the parties would not be capable of reaching agreement on this issue if negotiations continued, whether in the Troika format, or in some other form. Prime Minister Kostunica made it very clear to the Troika more than once that Belgrade would not entertain any proposal that did not close the door reliably on independence. The UK’s firm view is that in the absence of agreement between the parties, the UN Special Envoy’s Comprehensive Proposal for a Kosovo Status Settlement, providing for supervised independence, is the most viable way forward.

Ambassador Fedotov also says that Kosovo’s independence will set a precedent. Our position remains that, as a matter of principle, there is no universal blueprint that can be applied to every separatist or post-conflict scenario. Each is unique, and individual criteria should be applied. In the case of Kosovo, there are particularly strong grounds for seeing it as unique:

— Its substantial autonomy under the 1974 SFRY constitution was brushed aside by Milosevic in 1989.
— Sustained oppression followed, including violent oppression by the Yugoslav army in 1998–9.
— NATO intervened in 1999 to avert a humanitarian catastrophe.
— UNSCR 1244 was adopted in 1999 as the authority for the UN to govern Kosovo.
— Competence and authority have gradually been transferred to the Kosovo provisional institutions, including the establishment of new ministries.
— UNSCR 1244 provides for a political process to determine Kosovo’s final status.
— We are at the culmination of that process after 14 months of intensive negotiations under Ahtisaari, including 15 separate rounds of talks and 26 visits to the region, and an additional four months under the EU/Russia/US Troika.
— This is a sui generis framework without which we might have had to address the status issue earlier in more violent circumstances.

Notwithstanding Russia’s current position, Contact Group Foreign Ministers agreed in January 2006 that "the character of the Kosovo problem, shaped by the disintegration of Yugoslavia and consequent conflicts, ethnic cleansing and the events of 1999, and the extended period of international administration under UNSCR 1244, must be fully taken into account in settling Kosovo’s status". On the legality of the EU mission, our view is clear: UNSCR 1244 provides for the deployment of international police officers as part of a civil administration to help the local authorities to keep law and order. The ESDP Police and Rule of Law mission will draw its authority from the resolution.

Finally, the Ambassador was right to highlight Russia’s support for international peace support operations. The UK is grateful for Russia’s contributions to date, in particular with capabilities in short supply such as helicopters, and would very much welcome continued and increased Russian support for EU, NATO, UN and other international operations, including through the contribution of helicopters, ground forces and other capabilities. I am glad that Ambassador Fedotov had the opportunity to make this, and his other points, to the Committee. Whatever our views of his arguments, his contributions add to the serious discussions at hand.

18 February 2008

EU-RUSSIA SUMMIT, OCTOBER 2007

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

The 20th EU-Russia Summit took place in Mafra, Portugal on 26 October 2007.

BACKGROUND

2. The Summit was hosted by Jose Socrates, Prime Minister of Portugal, in his capacity as President of the European Council, assisted by the High Representative for the Common Foreign and Security Policy, Javier Solana, and by the President of the Commission, Jose Manuel Durao Barroso. The President of the European Council was accompanied by Luis Amado, Minister for Foreign Affairs, and by Manuel Lobo Antunes, Secretary of State for European Affairs. The President of the Commission was accompanied by the Commissioner for External Relations and European Neighbourhood Policy, Benita Ferrero-Waldner and Peter Mandelson, Trade Commissioner. Vladimir Putin, President of the Russian Federation attended for Russia, accompanied by Presidential advisers Sergey Yastrzhembskiy and Viktor Ivanov. Sergey Lavrov, Minister of Foreign Affairs, Elvira Nabiullina, Minister for Economic Development and Trade, Viktor
Khristenko, Minister for Energy and Industry and Alexander Grushko, Deputy Minister of Foreign Affairs, also attended.

3. Before the Plenary meeting, the heads of delegation met representatives of the “EU-Russia Industrialists Roundtable” who handed over conclusions on EU-Russia economic relations.

DELIVERABLES

4. The following agreements were reached at the Summit:

— A **trade agreement** was signed raising quota levels for 2007 and 2008 in flat steel and long steel products to take account of the enlargement of the European Union following the accession of Bulgaria and Romania, as well as to cover deliveries to steel service centres in EU Member States. Russia is the EU’s second largest steel products supplier, after China.

— In the margins of the Summit a Memorandum of Understanding between the EU and Russia was signed on the exchange of information on **drug abuse**. This is in addition to existing cooperation counteracting drug trafficking. A third of the opium produced in Afghanistan reaches the EU through Russia.

— It was also decided that an informal **Energy Early Warning Mechanism** should be established to signal potential supply problems. This should lead to direct contact between the Russian Energy Minister and European Commissioner for Energy to warn of potential disruptions to energy trade between the EU and Russia. This mechanism has a useful role to play in notifying Governments across the EU of supply disruptions, but should not replace energy suppliers’ contractual obligations to their customers within the EU.

5. President Putin also proposed the establishment of a **Russian-European Institute for Freedom and Democracy** to facilitate dialogue between members of the public, NGOs and experts on such issues as elections, national minorities and migrants, freedom of expression in the EU and Russia. Russia would supply funds to finance the Institute, which Putin proposed might be established in Brussels or a European Capital.

We await further details of the Russian proposal.

SUMMIT DISCUSSIONS

6. Discussions were held on the full range of issues in the relationship, covered by the Four Common Spaces (**Economic Cooperation; Justice, Freedom and Security; External Relations; and Research, Education and Culture**). The situation in the EU and Russia, and future perspectives for the relationship were also discussed.

**Economic Cooperation**

— Issues discussed included **WTO accession, foreign investment, energy (including the Commission’s Third Package energy proposals), trade and tariffs, and border flows**. President Putin welcomed the scale of the trading relationship. He said Russia was keen to invest in the EU and welcomed EU investment in Russia. He dismissed the idea that Russia was “buying up all of Europe’s assets”.

— The EU stressed their support for the idea of Russian accession to the **WTO**. Putin said that Russia’s recent economic growth was not wholly due to energy. He called accession to WTO a “natural process”, but said that Russia would choose to join only if the conditions for accession met Russia’s national interest. He said that Russian products outside the energy sector were still insufficiently competitive.

— The EU re-iterated its position that transparency was vital in the **energy sector**.

**Justice, Freedom and Security**

— Discussions covered human rights and democracy and visas. The EU emphasised that freedom of speech and freedom of the media were unconditional principles of a democratic system.

**External Relations**

— Discussions were held on the range of international issues, including the **Middle East** and **Iran, Burma, Kosovo, Georgia, Moldova and Afghanistan**. President Putin said that he was ready to work with the EU on all these issues, whilst the EU said that the two sides should co-operate more closely in the field of external security. Russia repeated its well-known position that it favoured the primacy of international law and political means to resolve international disputes.
Education, Research and Culture

— The Summit was preceded on 25 October by the first ever Permanent Partnership Council on Culture. President Putin described Russia as a country with deep European roots and traditions which, for centuries, had made an invaluable contribution to European spirituality and culture.

— The Commission spoke in support of the UK about the difficulties faced by the British Council in Russia and pressed Russia to conclude Cultural Centres Agreements (which formalise the status of organisations like the British Council in Russia) quickly, routinely, and without reference to wider issues.

Current Situation in EU and Russia

7. The EU briefed on developments in the EU Reform Treaty. Putin spoke about the coming elections in Russia.

Future Perspectives for the Relationship

8. Putin said he hoped that negotiations on a successor to the current Partnership and Cooperation Agreement would begin very soon and that an approved draft agreement would also be produced soon. He also said he hoped that, in the meantime, the existing agreement would be automatically extended for a year from 1 December. The existing PCA will be automatically extended provided neither side withdraws from it.

9. Putin also discussed his personal prospects. He said that he would not change the constitution to suit him personally. In accordance with the country’s “fundamental law”, he would not run for a third term as President in next year’s elections. The balance of power in the Russian executive did not need changing. It was wrong to believe he planned to take over the government of Russia and move the major powers there. There would be no infringement of the powers of the Presidency, at least while that depended on him. He had not decided on his own future role.

10. He proposed that the next EU-Russia Summit take place in Khanty-Mansiysk in Siberia in June 2008.

Assessment

11. The Summit was constructive and broadly in line with our expectations. We continue to believe that it is vital that the EU engages with Russia, as the EU’s largest neighbour, on the range of issues, even when we have disagreements. The deliverables were relatively modest when compared to previous summits. But these agreements do show that constructive progress on technical issues remains a healthy feature of the EU-Russia relationship.

Wider Russia Issues

12. The Committee Clerks have also invited me to use this letter to address a number of other, Russia-related, issues.

OSCE Election Observation

— On 31 October the OSCE Office of Democratic Institutions and Human Rights (ODIHR) received an invitation from Russia to observe its 2 December parliamentary elections. Russia has capped the number of observers at 70. A spokesman for the ODIHR expressed concern at the restriction on numbers, saying that this would seriously limit the possibility of meaningful election observation. This is the first time restrictions have been imposed in over 150 elections monitored by ODIHR.

— We share ODIHR’s concerns. We believe restrictions will hamper the work of ODIHR in conducting an effective monitoring mission. We are further concerned that delay in the issuing of an invitation to ODIHR by Russia has already hampered ODIHR from effectively monitoring the whole electoral process including an assessment of the media environment.

Russian Strategic Bomber Flights

— I can confirm that RAF aircraft have been launched to intercept Russian military aircraft entering a NATO air policing area on occasions when we were not given prior notification by the Russians. The Russian flights were over neutral waters, but it is standard NATO practice to intercept such flights. We do not believe that these flights are a threat to the UK. We believe it is in the interests of Russia and NATO allies that we focus our resources on tackling shared threats and common global challenges.
Italian Elections

— It is too early to say what effect the recent Polish elections will have on EU-Russia relations. Donald Tusk, the new Polish Prime Minister, has still to choose his Foreign Minister. He has said that one of the future government’s most important task in Poland’s foreign policy will be a change in Polish—Russian relations. When first asked about his planned foreign visits, Tusk named Brussels, Washington and Moscow. He later said his first trip will be to Brussels, Paris and Berlin. We fully support Commission efforts to resolve the Polish export ban issue that is delaying the launch of PCA successor talks.

I hope you find this letter helpful.

12 November 2007

EURO-MEDITERRANEAN PARTNERSHIP: ADVANCING REGIONAL COOPERATION TO SUPPORT PEACE, PROGRESS AND INTER-CULTURAL DIALOGUE (15869/07)

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

Sub-Committee C considered this document at its meeting on 15 November 2007 and cleared it from scrutiny. We regret that the document arrived too late for the Committee to consider it in advance of the EuroMed foreign affairs conference in Lisbon (5–6 November 2007).

While we welcome efforts to improve cooperation between the EU and non-EU Mediterranean countries, we are concerned that proposals for the creation of a Mediterranean Union, as referred to by the Commission (p 2) will undermine or duplicate the well-established EU initiatives for the Mediterranean area. Therefore, we would be grateful if the Government could clarify whether it supports these proposals in the event they have been made available, and whether it has any specific concerns. If so, what steps is the Government taking to express these concerns to our EU partners and the European Commission?

The Communication refers to the EuroMed Energy Forum. We would be grateful if you could clarify for us the purpose of this Forum and who participates in it. To what extent do you think it has been effective in attaining its objectives?

In a speech delivered in Bruges on 15 November 2007, the Foreign Secretary David Miliband held out the prospect in the long-term of much closer integration of neighbouring countries of the EU, including of the Maghreb, with the EU’s single market. How does this vision fit with current initiatives under the EuroMed Partnership?

21 November 2007

Letter from Kim Howells MP, Minister of State, Foreign and Commonwealth Office, to the Chairman


The attached Lisbon Conclusions (not printed) were unanimously agreed by all participants. As in the past, agreement hinged on the text relating to the Middle East Peace Process. It was not easy to find common language on MEPP, in particular on references to recent developments and ongoing initiatives, including the Arab Peace Initiative. So, as in the past, the text was a compromise.

Ministers welcomed Albania and Mauritania into the Barcelona Process. Both had expressed interest in joining EuroMed and were represented at the Conference.

There is a passing reference to the Mediterranean Union as an initiative complementary to EuroMed.

The rest of the Conclusions cover the full range of EuroMed activities and set out a Summary of planned initiatives for 2008. As in the past, the final text is long and cumbersome, having been negotiated first amongst the 27 EU Member States and then with the Mediterranean Partners. Some parts are based on proposals in the Commission Communication. The rest represents a balance of various national priorities and was the best the Portuguese Presidency could come up with in the face, particularly, of Syrian spoiling tactics.

UK priorities are reflected in the conclusions:
References to key democratic principles and promoting and supporting reform, including agreement to continue discussions on elections;

Reiterated condemnation of terrorism in all its forms and commitment to fully implement the EuroMed Code of Conduct on Countering Terrorism;

Need for further cooperation in the field of energy and a clear mandate for further initiatives on climate change.

Agreement to UK proposals for a Seminar on developing citizens' participation in public life and a Conference on the role of citizens in promoting moderation and rejecting extremist views.

Acknowledgement of the European Neighbourhood Policy as reinforcing and complementing the Barcelona Process, with clear references to the ENP Governance Facility and ENP Investment Facility.

The Summary of initiatives for 2008 anticipates an ambitious programme of 11 EuroMed ministerial meetings, from Trade and Investment, to Water, to Health, as well as the next Foreign Ministers' Conference in the second half of 2008. Of particular interest will be the Euromed Ministerial meeting on Culture and Cultural Dialogue, following the declaration of 2008 as Euro-Mediterranean Year of Dialogue Between Cultures.

The Barcelona process may have some remaining potential to help promote regional cooperation, confidence-building measures, mutual understanding, support for reconciliation and facilitating progress in the Middle East Peace Process. But it needs to do more to live up to the expectations upon it. As Commissioner Ferrero-Waldner said in her remarks to the Plenary, echoed by a number of delegations, “Let us be frank, the Euro-Mediterranean partnership has not yet fulfilled its entire potential”.

If the process is to continue it needs to focus much more effectively on formulating solutions to problems like security, illegal immigration and energy. The European Union has an important role to play in the Middle East Peace Process, in generating debate about long-running conflicts such as those in Iraq and Afghanistan, and through using EuroMed to support political reform and to combat terrorism and extremism. I highlighted in the Lisbon Plenary the need in our communications to better counter the so-called “single narrative” of Al Qaeda and noted the role the Anna Lindh Foundation could play in using intercultural dialogue to counter extremism by promoting moderation and tolerance. Several delegations also highlighted these themes. But the challenge remains to ensure that the focus is not on process, but on effective delivery through partnership.

22 November 2007

Letter from Kim Howells MP to the Chairman

Thank you for your letter of 21 November to my colleague Jim Murphy, Minister for Europe, about the Lisbon Euro-Mediterranean Foreign Affairs Conference. I am replying as the Minister with responsibility for the Euro-Mediterranean Partnership.

We share the Committee's regret that the Commission Communication was circulated only shortly in advance of the Foreign Ministers’ meeting. Please be assured that we submitted the Explanatory Memorandum as quickly as we were able, well within the ten-working-day deadline.

I wrote to your Committee on 22 November to provide an update on the outcome of the Foreign Ministers' meeting and attached the agreed Lisbon Conclusions. I shall reply here to the Committee's specific queries.

We look forward to hearing further details about President Sarkozy’s plans for a Mediterranean Union as and when they emerge. It is important that the Mediterranean Union complements existing initiatives such as the European Neighbourhood Policy and the Euro-Mediterranean Partnership in order to be effective. We continue to make this point to France, the European Commission and EU Partners.

The EuroMed Energy Forum meets every three years to review progress on the Euromed Energy Partnership, prepare meetings of Euromed Energy Ministers, and recommend to ministers the priorities for the next 3-year period. It comprises Energy Directors-General from the EU and the Mediterranean partner countries, including Israel and the Palestinian Authority, Algeria and Egypt (the two most significant exporters of Liquefied Natural Gas to the UK), and Turkey (a vital gas transit state).

The Forum last met in Brussels on 21 September 2006. Since then, EuroMed energy officials have worked on preparations for the next EuroMed Energy Ministerial which will take place in Cyprus on 17 December. We are confident that the Ministerial Declaration and Work Plan will reflect UK priorities, including promotion of an investment-friendly regulatory framework to encourage companies to invest in further energy production and exports to the EU.
The UK has been an active participant in the EuroMed Energy Forum’s experts group. We believe that useful progress is being made towards the Partnership’s objectives which include integration of electricity markets in North Africa and gas markets in the Levant, promotion of greater use of renewable energy, and better market regulation and transparency in order gradually to converge towards the longer-term goal of a common Euro-Mediterranean energy market.

The Foreign Secretary’s wish, expressed in his Bruges speech on 15 November, for closer longer-term integration of the EU’s neighbours with the single market is entirely in line with the trade liberalisation currently being taken forward under the EuroMed Partnership and the goal of a Euro-Mediterranean free trade area by 2010. It is also consistent with the goals in the Commission’s May 2007 non-paper on ‘ENP—A Path towards Further Economic Integration’. This foresees a gradual process of greater economic integration through regulatory convergence under ENP Action Plans, leading to deep and comprehensive free trade agreements, with a possible ultimate goal of a Neighbourhood Economic Community. We fully support these goals.

6 December 2007

EUROPEAN DEFENCE AGENCY 2008 (14937/07, 15413/07, 15859/1/07)

Letter from the Chairman to the Rt Hon Des Browne MP, Secretary of State, Ministry of Defence

Thank you for your Explanatory Memorandum of 28 January covering the above documents which were considered at Sub-Committee C’s meeting on 13 March and cleared from scrutiny.

Members have however asked for an explanation of why the delay occurred in depositing the first 2 documents above for scrutiny since they noted that the Guidelines were adopted at the Council in Ministers of Defence composition on 19 November 2007 and the Report noted at the GAERC of 19 November 2007. The Sub-Committee hope that your response to this letter will be sufficient to avoid the need for them to raise the subject when MOD representatives next appear before them.

The Sub-Committee also noted the delay in depositing the third document above and asked if you were yet in a position to say when it will be considered in Council?

31 March 2008

Letter from the Rt Hon Des Browne MP to the Chairman

Thank you for your letter of 31 March clearing three letters from scrutiny.

Firstly let me apologise for the delay in depositing the two Explanatory Memoranda on the Council’s guidelines for the EDA work in 2008 and the Head of the Agency’s report to the Council.

These are non-legislative documents. We aim to submit such documents for scrutiny as soon as possible, and before they are seen by the Council where we can. On this occasion it was not possible to get you these documents before they went to the Council on 19 November, though I recognise that even so we should have submitted both the documents and our Explanatory Memoranda earlier than we did. But the scrutiny guidelines that we have agreed with you are clear that non-legislative documents can be agreed in Council prior to completion of the scrutiny process without this constituting a scrutiny override. And you will, I hope, agree that while the documents themselves were not deposited until 14 January 2008 the substance was covered in my letters of 11 and 26 November 2007, on which the Committee was given opportunity to comment. Additionally, Sub Committee C had the chance to examine officials on 29 November 2007 on the current and future work of the Agency.

You also noted a delay in submitting for Scrutiny the draft Council Joint Action amending the Joint Action which established the EDA. In fact, as I made clear in my letter of 12 February 2008 to Michael Connarty, we have held this under a parliamentary scrutiny reserve pending scrutiny committee clearance. Following House of Commons European Scrutiny Committee’s clearance of this document on 6 February 2008 and your Committee’s clearance on 13 March 2008 we are in a position to lift our scrutiny reserve and allow these changes to be approved at the Transport Telecommunications and Energy Council on 7 April 2008.

8 April 2008
EUROPEAN DEFENCE AGENCY: CHANGES TO THE ESTABLISHMENT

Letter from the Rt Hon Des Browne MP, Secretary of State, Ministry of Defence, to the Chairman

In clearing EM 15859/1/07, on changes to the Joint Action establishing the European Defence Agency, you asked why this had not been submitted for scrutiny before the Council meeting, identifying this as a breach of scrutiny.

I can assure you that I take my responsibility to submit European decisions for scrutiny seriously. In fact the UK has placed and maintained a scrutiny hold on this particular decision until it clears our Parliamentary procedures. This issue was first put on the EU Council agenda on 21 December 2007; but we had not by then received the final documents. We placed our scrutiny hold at that point. We received the necessary EU documents mid January and they were tabled by FCO on 14 January. My Explanatory Memorandum identified 29 January as the next Council on which the decision might be possible but I acknowledge that we should have been clearer that we were maintaining a scrutiny hold until the Scrutiny Committees cleared the documents. I am sorry for any misunderstanding over this issue.

12 February 2008

EUROPEAN DEFENCE AGENCY: STEERING BOARD MEETING, NOVEMBER 2007

Letter from the Rt Hon 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 19 November. I would 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. The final agenda and papers for this meeting will be issued by the Agency later this week, following an official level Preparatory Committee meeting.

Subject to further work in the Preparatory Committee, the Steering Board will be invited to agree two items as an “A” point. The first of these, the 2008 Work Programme, is a high level overview of the Agency activity for 2008. I am broadly content with the direction this is taking and strongly support the Agency’s work on its key strategies. I feel that there is more the Agency could do to make their programme more coherent with the capability needs of the EU and note that currently it is not prioritised against the resources available. Therefore I will be supporting the work programme but asking the Agency to work in 2008 to produce a more coherent prioritised plan for 2009 that takes account of the capability priorities identified in the EU Headline Goal 2010 exercise.

The second “A” point deals with the 2008 budget. We consider that the Agencies draft budget for 2008 is excessive and that its projected growth in the draft three year framework is unjustified. We are working in Council bodies to restrict the Agency’s planned rate of growth as set out in the three year framework: if we can achieve that it may be possible for the Steering Board to set the budget for 2008. If we cannot agree the three year framework, then the Steering Board will not be able to adopt the budget, which will therefore need to be adopted by the same extraordinary submission to the Council as we used in 2005 and 2006. I regard it as more important to exercise proper financial control over the Agency than to meet the procedural requirements laid down in the EDA’s founding Joint Action. Looking at the 2008 budget proposal itself, we will support the operational budget increasing by €1 million in 2008, but will ask for that additional sum to be frozen for release mid-year if genuinely needed; we will support more modest growth in staff numbers than requested and, in the absence of a persuasive business case, will not support earmarking €8 million for work on allowing UAVs to fly in controlled airspace. We share this important aspiration but need to do more work before we are clear how the EDA might be able to contribute.

The next Agenda item deals with the framework for the forthcoming European Defence Research & Technology Strategy. I am happy that this framework sets out the principles that are going to be applied to the construction of the strategy. I am happy to endorse the framework and look forward to the publication of the Strategy next year.

The last 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 enabling them to contribute more fully to ESDP and other operations. The findings for 2006 are encouraging, especially the indications that we are spending more on defence equipment, but the collective nature of the data presented does not allow us to compare national performance. The EDA has proposed four collective benchmarks targets. Whilst I am content with the benchmark for defence procurement, I would like to see the benchmark for research and technology based on a realistic figure closer to the current average. The two benchmarks that measure collaborative procurement and R&T are based on an erroneous assumption.
that collaboration in its own right and collaboration in Europe are desirable objectives. I think it is worth pressing on with this exercise but I will be making the point that these benchmarks are useful only to the extent that they allow comparison between individual national performance and discussion between Ministers.

I will write to you after 19 November to report on the outcome of the Steering Board.

11 November 2007

Letter from the Rt Hon Des Browne MP to the Chairman

I wrote to you on 11 November concerning the position I intended to take at the European Defence Agency Ministerial Steering Board on 19 November. I am writing to you to explain the outcome of that meeting and the discussion of the EDA budget in the General Affairs and External Relations Council (GAERC) that preceded it. The FCO will be reporting separately on the overall conclusions of the GAERC.

I supported the “A” point on the 2008 work programme on the basis that the long term strategies and objectives will add value to European capabilities. I stated in my previous letter that I felt that there was more that the Agency could do to make their work programme coherent. MOD officials have conveyed this point directly to the Agency and will be working with them to improve the situation for 2009.

As I also mentioned in my previous letter, I believed the levels of growth within the Agency proposal for a three year financial framework were excessive. Unfortunately, this position was not shared by all Member States and the Council bodies prior to the GAERC were unable to reach agreement on the three year financial framework. Discussions at the GAERC therefore focused on agreeing a budget for 2008 only. I negotiated an agreement of €20 million for the functioning budget but on the basis of only two new staff not the six requested by the Agency and €6 million for the operational budget but with €1 million frozen, only to be released on the production of a robust business case by the Agency. I also maintained my insistence that the €6 million provisionally allocated for work on operating UAVs into controlled airspace should only be released if there was a robust and properly costed business case. Both the incoming Presidencies (Slovenia and France) supported our position and agreed that all Member States should first be consulted on the proposed business cases before deciding whether the Agency should be allowed to draw down these funds. I am clear that I need not only a robust justification as to why the Agency should proceed with work in this area, but also a case that allows me to judge whether it is a better use of defence funds to invest in this work rather than investing in other projects, nationally or internationally.

I endorsed the framework for the European Defence Research & Technology Strategy as it sets out the principles to be applied to the construction of the strategy.

I expressed my support for the work the Agency has done on collecting and presenting the 2006 defence data and the encouraging trends that it shows. However, I made the point that any failure to meet the benchmarks was down to Member States individually rather than collectively. I remain convinced that only a presentation of data on national performance against common benchmarks will really expose which countries need to improve their effort and where. For our part I made clear that while the UK may not meet some of the benchmarks that the Agency were proposing, I welcomed a discussion between Defence Ministers about levels of spending backed up by data from the EDA on spend by individual Member States.

26 November 2007

EUROPEAN DEFENCE EQUIPMENT MARKET (16488/07, 16682/07)

Letter from Rt Hon Baroness Taylor, Minister of State for Defence Equipment and Support, Ministry of Defence, to the Chairman

Further to Lord Drayson’s letter of 23 May 2007 (reference D/MSU/3/6/is) to Michael Connarty MP (not printed) regarding the possible Defence Directive in the context of the Committee’s scrutiny of document 6223(07), I am writing to inform you that we now expect the European Commission (EC) to publish its Defence Package on 5 December—slightly delayed from mid-October as originally envisaged. The Package will comprise three elements

— A Communication, consisting of the Commission’s strategic analysis of the European defence industrial sector, the challenges that it faces and the actions which the Commission see as being necessary.
— A Defence Directive, providing public procurement rules adapted to the specifics of the defence and security sector.
— A Regulation on Intra-Community Transfers.
Although the Commission consulted Member States (MS) on the principles to be reflected in the Directive and the Regulation, this did not extend to discussions on the detailed drafting. Consequently, the documents published on 5 December will not have been seen before. As both the Directive and Regulation will each be at least 100 pages long, the final versions will not have been seen before and will require consultation across several departments, it will not be possible to provide a meaningful analysis, co-ordinated across the relevant Government departments, within just 10 working days.

I hope that you will find it acceptable if I aim to provide a full EM for the Committee’s return after the Christmas break.

26 November 2007

Letter from the Rt Hon Baroness Taylor to the Chairman


Whilst the analysis presented here is comprehensive, further work is required on the legal and technical aspects of these papers, necessitating further consultations within Government and with the Commission. Inevitably, the results of these discussions will influence the Government’s position on the proposals in the Defence Package. At the moment, however, we feel that both Directives have the potential to provide worthwhile benefits but, equally, both will need further amendment before we would be content to approve them. On the other hand the Communication proposes little that is new or not already been addressed in some way by the European Defence Agency and we will press the Commission to work closely with the EDA on the proposed strategy.

21 January 2008

Letter from the Rt Hon Baroness Taylor to the Chairman

In its decision to retain under scrutiny the European Commission’s Communication—a Strategy for a stronger and more competitive European Defence Industry (COM (07) 764) and the Directive on the Coordination of procedures for the award of certain public works contracts, public supply contracts and public services contracts in the fields of Defence and Security (16488/07 COM (07) 766), the Committee asked to be provided with updates on the progress of the documents.

With regard to the Directive, the Council Working Group is still undertaking its first reading of the document and drafting sessions for the text of the articles will not commence until the end of May at the earliest. Once drafting sessions begin I will write to you to keep you informed of developments.

In the Explanatory Memorandum on the European Commission’s Communication, sent to you 21 January 2008, we set out our key concerns regarding the document. Principally those were that whilst we are keen to support initiatives to improve the efficiency and competitiveness of European Defence industry, we believe that few of the proposals in the Directive are new, most are already being addressed by the European Defence Agency (EDA) and, indeed, that EDA is better placed to take forward many of these work strands. In addition we commented on the Commission’s worrying persistence in looking at issues through a single market lens.

The Slovenian Presidency has now prepared draft ‘conclusions’ in respect of the Communication. These set out the MS’ views and the UK has contributed to these. These conclusions are integrated into wider conclusions on Innovation and Industrial policy and will be discussed at the Competitiveness Council on
29–30 May. The strategic level draft conclusions are, in summary, that: they welcome steps to improve competitiveness and cost efficiency by reducing barriers to competition while still maintaining essential security interests, security of supply, innovation and responsiveness; recognise the role of SMEs; demonstrate the importance of common standards; highlight the desirability of increased cooperation amongst MS; and encourage MS, the Commission and EDA to work together towards these aims. Whilst the conclusions do not explicitly mention the global nature of defence equipment markets, we feel that they do sufficiently cover all of our other major considerations.

We do not expect that there will be any further discussion of the individual strands of the Communication in the context of this current process. However, the Commission is likely to seek some follow-up work. The Government will give further thought to our objectives in any areas that the Commission might pursue.

I hope this information is helpful.

28 April 2008

EUROPEAN SECURITY STRATEGY
Letter from The Rt Hon Lord Roper, Chairman of Sub-Committee C, to Jim Murphy MP, Minister for Europe, Foreign and Commonwealth Office
Sub-Committee C of the European Union Committee recently decided to launch an inquiry into the EU’s European Security Strategy. We understand that the Strategy will be reviewed by the Council of the EU under the French Presidency in the second half of this year, with a view to agreement being reached on a revised Strategy being agreed at the December European Council.

We would be grateful if you could set out the Government’s position on the Strategy and its revision. This would be of great help to us with our inquiry. In particular, what are the strengths and weaknesses of the present Strategy? Are there threats and risks that the Government will be seeking to include in the revised Strategy? Do you have any indication of the extent to which the Government’s position is shared by the other EU Member States and the European Commission?

In due course we would also be most grateful if you could appear before the Committee to give evidence, and understand that your officials are in touch with our Committee Office about possible dates.

23 April 2008

EUROPEAN NEIGHBOURHOOD POLICY (16493/07)
Letter from the Chairman to Jim Murphy MP, Minister for Europe, Foreign and Commonwealth Office
Sub-Committee C considered the above document at its meeting on 17 January and cleared it from scrutiny. Members expressed their continued active interest in the subject of the European Neighbourhood Policy, and particularly the Mediterranean dimension, and their intention to return to it at a future date. In the light of this we would request that you continue to keep us informed of developments and of the Government’s thinking on the subject.

18 January 2008

GENERAL AFFAIRS AND EXTERNAL RELATIONS COUNCIL, BRUSSELS, FEBRUARY 2008
Letter from Jim Murphy MP, Minister for Europe, Foreign and Commonwealth Office, to the Chairman
The next GAERC will be held in Brussels on 18 February. The Foreign Secretary will represent the UK. The agenda items are as follows:

GENERAL AFFAIRS
Preparation of the European Council on 13–14 March 2008—Annotated draft agenda
The European Council is an opportunity to make progress on Europe’s delivery agenda—on economic stability, jobs and growth and climate change. At the Council, we expect the Presidency to highlight the EU’s ambitious global leadership in tackling climate change. The Council will also endorse the final three-year cycle of the Lisbon agenda for economic reform and the Commission’s Single market Review. It should also reiterate the importance of delivering on the key priorities of raising skills, reducing red tape for small business,
improving Europe’s record on innovation, tackling climate change and opening energy markets. The UK supports the Presidency’s wish to focus attention on the specific measures needed to allow Europe’s citizens to take advantage of the opportunities of globalisation, based on Europe’s common values of flexibility, fairness and openness.

**Enlargement—Croatian Ecological and Fisheries Protection Zone**

GAERC conclusions in December called on Croatia to respect an agreement from 2004 with Italy and Slovenia not to apply its ecological and fisheries protection zone to EU member states. Discussion at this GAERC follows Croatia’s decision to introduce the zone on 1 January 2008. The Government hopes a resolution of the issue can be reached following consultation between the parties.

**EXTERNAL RELATIONS**

**Western Balkans**

Discussion is likely to focus on Kosovo. In December, the European Council agreed that the EU should “play a leading role in strengthening stability in the region and in implementing a settlement defining Kosovo’s future status”. Discussion is likely to focus on operationalising that commitment in the light of developments. As part of this, the EU has already been preparing to deploy an EU Special Representative and a Police and Rule of Law mission to Kosovo. The Government continues to believe the status quo in Kosovo is unsustainable and is working closely with EU partners for a rapid and lasting resolution of Kosovo’s status, which will bring stability to Kosovo and the region.

**ENP**

The Council will adopt Conclusions welcoming the Commission’s 5 December Communication ‘A Strong European Neighbourhood Policy’ and taking note of progress made so far. The Government supports the Commission’s desire to make full use of the European Neighbourhood Policy’s potential to promote a stable, secure and prosperous Neighbourhood. In particular the Government welcomes proposals to make progress on cross-cutting areas, including trade liberalisation in the neighbourhood, following thorough economic analysis.

**Middle East/Lebanon**

Council discussion of the Middle East is expected to focus on the latest developments in Gaza and southern Israel. The EU has made clear the need for all parties to work towards reopening the Gaza crossings under Palestinian Authority control and its readiness to resume its border assistance mission at Rafah as soon as conditions allow. The Government supports this position.

The Government is committed to supporting the process initiated at Annapolis, which has put the Israelis and Palestinians on a path to real negotiations in 2008, leading to a final settlement of two states living side by side in peace and security. Israeli security is absolutely fundamental to a just solution; and Palestinian hardship can only be tackled through a political process that creates an economically and socially viable Palestinian state at peace with Israel.

There is likely to be a brief discussion of Lebanon in light of the ongoing political crisis. The Government remains deeply concerned by the continued lack of a President in Lebanon and the role of Syria in obstructing a deal. The Government welcomes the EU’s continued support for the efforts of the Arab League to broker a solution and for the EU’s continued political and practical support to the government of Lebanon. The third meeting of the EU-Lebanon Association Council on 18 February will be an opportunity to reinforce this support.

**Kenya**

The Council will discuss the latest situation in Kenya and agree conclusions in light of progress made by the Kenya National Dialogue mediated by Kofi Annan. The Government remains concerned about the situation in Kenya and welcomes this opportunity to discuss what further support the EU could give to efforts to find a swift and lasting political solution. The Government supports the call in the Conclusions for an immediate end to the violence and the strong expression of support for the mediation efforts led by Kofi Annan.
DRC
Discussion is likely to focus on recent progress towards a political resolution of the conflict in the east of the country. The Government believes that, as a member of the Joint Monitoring Group established to ensure implementation of the plan, the EU must remain closely engaged. Implementing these agreements remains the responsibility of the DRC, but the EU and the international community must remain supportive of these efforts.

Burma
The Council is expected to agree Conclusions on Burma. The Government welcomes these Conclusions, which reflect the need for the Burmese regime to take urgent and concrete steps towards democracy, national reconciliation and respect for human rights. We believe the EU should underline its readiness to reinforce the restrictive measures it has already agreed if progress is not made.

WTO/DDA
Discussion is likely to focus on new negotiating texts on Agriculture and Non Agricultural Market Access, which issued on 8 February. The Government strongly supports the negotiating process led by WTO Director General Pascal Lamy and sees these texts as a good next step in that process. The Government will be encouraging partners to continue to engage in the Lamy-led process, using these texts as a basis for negotiation. The Government expects discussion in the Council to highlight differing views about the texts and prospects for an agreement. However, the Government does not think that failure of the round is an option, given its importance for global prosperity and the alleviation of poverty.

EPAs
The Commission will give a short presentation on progress in Economic Partnership Agreements negotiations (EPAs) and next steps. The Government is pleased with the progress that has been made to date—so far 35 African Caribbean and Pacific (ACP) countries have secured duty free and quota free access to the EU market, with the Caribbean signing a full EPA. The Government will continue to support the Commission’s work to build on the agreements and ensure that EPAs complement ACP economic growth.

Iran
We do not expect extensive discussion of Iran at this Council. The EU will need to act once a UN Security Council resolution has been agreed, which we hope will be possible before the end of February. In light of this, we will be looking for decisions on Iran at the March GAERC. The Government fully supports the strengthening of EU sanctions on Iran and will be pressing for the EU to take a strong stance on this issue.

14 February 2008

KOSOVO: EU SPECIAL REPRESENTATIVE
Letter from the Chairman to Jim Murphy MP, Minister for Europe, Foreign and Commonwealth Office
The above document was considered at Sub-Committee’s C’s meeting on 31 January and cleared from scrutiny.
Members expressed strong support for EU action in this difficult situation and the conviction that a substantial EU presence would be a major contribution.
6 February 2008

MISSILE PROLIFERATION: EU MEMBER STATES’ MEMBERSHIP OF MTCR
Letter from Kim Howells MP, Minister of State, Foreign and Commonwealth Office, to the Chairman
Thank you for your letter of 18 October 20077 about the issue of MTCR membership for all new EU Member States.
Together with our EU partners, the UK actively supports the early admission of all EU Member States to the MTCR. We are clear that all of them meet the admission criteria of the MTCR and we believe that their membership would significantly strengthen the MTCR’s fight against missile proliferation.

7 Correspondence with Ministers, 11th Report of Session 2008–09, HL Paper 92, p 118.
MTCR proceedings are confidential but I can tell you that this matter has been discussed within the MTCR for some time. Some EU partners have had applications to join pending since 2004. As consensus among all MTCR partners is required for the admission of new members, membership has not so far been secured. The vast majority of Regime participants support the EU case, but not the entirety of the membership, with dissenters arguing that the membership criteria have not been met. We believe that they are seeking to link the issue to other issues, outside of the MTCR framework. The EU has carried out a number of high-level demarches on this issue but to no avail.

The MTCR Plenary is taking place this year in Athens from 1–9 November. The early membership to the MTCR of all EU Member States remains a key objective for the EU. The UK delegation will again be actively supporting the EU Presidency in arguing in favour.

November 2007

PROHIBITION OF USE, STOCKPILING, PRODUCTION AND TRANSFER OF ANTI-PERSONNEL MINES AND THEIR DESTRUCTION (OTTAWA CONVENTION)

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

Sub-Committee C considered the above proposal for Joint Action at its meeting on 24 January and cleared it from scrutiny.

The members would like to be informed in more detail of the action planned under this Joint Action, including which countries/regions are to be targeted and how the budget will be distributed.

31 January 2008

Letter from Jim Murphy MP to the Chairman

Thank you for your letter of 31 January about the Joint Action in Support of the Ottawa Convention in which you asked for further detail on which countries are to be targeted and how the budget will be distributed.

The Geneva International Centre for Humanitarian Demining (GICHD) will be responsible for the technical implementation of the Joint Action. As set out in the draft text of the Joint Action, GICHD have now prepared lists of potential venues for regional seminars and recipients of technical assistance. The venues were identified on the basis of the leadership role countries have taken in the region, or because the issues they face demonstrate key ongoing challenges relating to implementation of the Convention. Possible recipients of technical assistance were chosen because GICHD felt these countries would either benefit from assistance to overcome specific challenges in fulfilling their obligations under the Convention, or believed there was a need to raise awareness of what their obligations were under the Convention.

The relevant working group is currently considering GICHD’s proposals. The Council Secretariat has estimated the total budget of the Joint Action to be €980 000. The decision on countries/regions to be targeted is part of the ongoing process to finalise the budgetary arrangements, including how the budget will be distributed.

I will write again when this process is complete with details on which countries are to be targeted and how the budget will be distributed.

19 February 2008

REPUBLIC OF CAPE VERDE AND THE EU (14932/07)

Letter from the Chairman to Jim Murphy MP, Minister of State, Foreign and Commonwealth Office

Thank you for your Explanatory Memorandum (EM) of 7 November which Sub-Committee C cleared from scrutiny at its meeting on 15 November.

Members supported the initiative in general but would like clarification of the existing and proposed distribution in percentage and absolute terms of the financial assistance to Cape Verde. They also support the Government’s stance in stressing that no special preference should be given to Cape Verde financially under the EDF and other Community instruments.
Members did however note that the section of the EM on financial implications was not strictly accurate as there are bound to be financial implications since the UK contributes to the EDF. Perhaps the addition of a phrase such as “no immediate financial implications” would be more accurate.

21 November 2007

Letter from Jim Murphy MP to the Chairman

Thank you for your letter of 21 November, in which you requested clarification of the existing and proposed distribution in percentage and absolute terms of financial assistance to Cape Verde.

Under the 9th European Development Fund (EDF), Cape Verde has been allocated €51 million (£36 million), including €44.5 million (£31 million) for programmed assistance and €6.5 million (£4.5 million) for unforeseen needs. This equates to approximately 0.4% of the €13.8 billion 9th EDF.

Under the 10th EDF, Cape Verde’s initial allocation is €53 million (£37 million), which includes €49.9 million (£35 million) for programmed assistance and €3.1 million (£2 million) for unforeseen needs. This equates to approximately 0.2% of the €22.682 billion 10th EDF.

Cape Verde’s allocation will come from within the overall ceiling of the 10th EDF. The UK’s share of the 10th EDF is not a vested. However, as you suggest, it is not possible to provide specific figures for the amount of funding that might be made available in the future to Cape Verde from the general budget of the European Communities; or from the European Investment Bank’s own resources, which are not allocated on a country-by-country basis.

Nonetheless, it is worth reiterating that, thanks in part to UK lobbying, paragraph three of the final Council Conclusions (attached) (not printed) state that “The Union will consider co-operation in support of the Action Plan from a range of instruments in accordance with their agreed legislative frameworks and allocation processes.” This should help ensure that no special preference should be given to Cape Verde financially under the EDF and other Community instruments in the future.

4 December 2007

REPUBLIC OF KOREA: PROPOSED PARTNERSHIP AND COOPERATION AGREEMENT

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

A Council Decision is due to be agreed at the General Affairs and External Relations Council on 29 April on the mandate for negotiating either a proposed EU/Republic of Korea Partnership and Cooperation Agreement or an expanded Framework Agreement on Trade and Co-operation. I am unfortunately unable to supply you with an Explanatory Memorandum as the text of the Decision contains the EU negotiating position, and is therefore classified. I felt, however, that it would be helpful to write and inform the Committee of the general purpose of the Decision. I will of course keep the Committee updated as negotiations progress.

The Republic of Korea is one of the fastest growing economies in East Asia, and is already an important trading partner for European nations. In order to strengthen ties with the Republic of Korea, the EU is now looking either to extend the scope of the existing Framework Agreement on Trade and Co-operation, or to negotiate a new Partnership and Co-operation Agreement. If agreed as expected next week, the mandate will allow the EU to open negotiations with Seoul. The route ultimately taken by the EU will depend on the outcome of talks with the Koreans.

The Government sees closer EU ties with the Republic of Korea as a positive step. They are already a key bilateral trade partner, and cementing links with the EU can only be of benefit to the UK. We consider that the mandate to be agreed represents a good balance and should ensure the effective engagement of the EU in the forthcoming negotiations.

26 April 2008
RESTRICTIVE MEASURES AGAINST BURMA/MYANMAR (5401/08)

Letter from the Chairman to Jim Murphy MP, Minister of State, Foreign and Commonwealth Office

Thank you for your Explanatory Memorandum of 12 November on the above subject which Sub-Committee C considered at its meeting on 15 November and cleared from scrutiny.

However, the Sub-Committee did have reservations about the proposed measures on exports as members felt that the sanctions were likely to harm the poorest people in Burma, rather than the leadership of the regime. They would like to draw attention to the report of the House of Lords’ Economic Affairs Committee on the effect of sanctions (2nd Report 2006–07 HL Paper 96—in particular chapter 4). Members would welcome an assurance that the impact of these measures has been fully thought through and will not have an adverse impact on the very poorest Burmese people. The Economic Affairs Committee were also concerned that sanctions, besides often being ineffective, could also be counter-productive. Their view was that it seemed to be the case that the long-standing sanctions against Burma have achieved nothing positive and arguably have made the situation worse.

Could you please also let me know what penalties are imposed for those who break the sanctions?

21 November 2007

Letter from Jim Murphy MP to the Chairman

Thank you for your letter of 21 November in which you raised reservations concerning the extension and addition of sanctions against Burma/Myanmar.

EU sanctions were first imposed on Burma in 1996 in response to the political and human rights situation in the country. They have been steadily extended in the last decade as the regime has taken further steps to restrict civilian and political rights. These sanctions were designed with two objectives: to target the economic interest of the country’s leadership and their main sources of revenue; and to send a clear political signal to the regime. Whilst we have not seen evidence to suggest that previous sanctions were counter-productive, we would of course have hoped that the regime would have responded positively. We have always seen sanctions as part of a wider strategy, which has included lobbying of Burma’s neighbours and partners, and using all available multilateral and bilateral means to encourage change.

In the light of the brutal repression by the Burmese authorities against peaceful demonstrators and the serious human rights violations that took place in September and October, we believe it was appropriate for the EU to agree stronger measures against the regime.

Further measures were given a great deal of thought. As you will know from the Foreign Secretary’s response to the House of Lords second report on the effect of sanctions, it is UK policy to have targeted measures that avoid harming the ordinary population. In the case of Burma we have targeted the timber, precious metals and gems sectors of the economy. We recognise that trade sanctions may have some effect on local business interests, but we have aimed to minimise this wherever possible by targeting industries that directly contribute to the regime and avoiding those that would have a greater impact, such as tourism, food products or the textile industry.

The EU Common Position will be given effect throughout the EU by an EC Regulation, which will be directly applicable. In the UK, penalties for breaches are imposed by way of a domestic Statutory Instrument. For EU sanctions regimes, we usually impose a maximum criminal penalty of two years imprisonment or a fine. The regulations in relation to Burma are due to be updated and a new draft is in preparation, to be made following the new EC Regulation.

We will work closely with EU partners to ensure these new measures are properly monitored, assessed and reviewed in light of developments on the ground. These measures are designed to apply further pressure to the regime and to coerce it to take concrete steps towards democracy. Whether they are relaxed in future or strengthened depends on the willingness of the regime to make real progress towards political transition.

4 December 2007

Letter from the Chairman to Jim Murphy MP

Sub-Committee C considered this document at its meeting on 7 February 2008 and cleared it from scrutiny.

The Sub-Committee agrees that the EU should actively seek to defend civil and political rights in Burma and it therefore supports the sanctions against the Burmese regime, so long as they are effective and do not disproportionately impact on the Burmese population. In this respect, I would like to thank you for your letter
The Regulation does not contain a provision for a review of the effectiveness of the sanctions or their impact on the population, although article 9 of the Common Position as amended provides that “This Common Position shall be kept under constant review. It shall be renewed, or amended as appropriate, in particular as regards the enterprises listed […] if the Council deems that its objectives have not been met.”

Therefore, we would be grateful for some further information regarding the EU’s sanctions against Burma. How often does the Council review these sanctions, and what criteria and methods are used to determine their effectiveness and impact on the population? To what extent does the EU draw on information from UN agencies and non-governmental organisations operating in the country, in addition to intelligence provided by the Member States? Does Burma form part of the EU’s discussions with China, and have these discussions yielded any results?

19 February 2008

Letter from Jim Murphy MP to the Chairman

Thank you for your letter of 19 February advising us that the Burma Regulation had cleared scrutiny. You also asked if I could give some further information regarding the EU’s sanctions against Burma.

As you note, Article 9 of Common Position 2007/750/CFSP urges Member States to keep the agreed sanctions under constant review. To be effective, restrictive measures should be lifted according to their objectives and not according to time limits. As such, the Council reviews these targeted measures against Burma in line with the guidelines agreed by Member States in 2005. The guidelines state that measures should be reviewed, taking the specific objective of each measure, and all other relevant considerations into account. The Council should schedule a specific review whenever the political context has changed and this review date can be decided taking into account relevant facts and considerations, for example dates of future elections or peace negotiations which might bring about a change in the political context.

In order to ensure adequate follow-up to all EU decisions imposing restrictive measures, a specific Council body exists. The Foreign Relations Counsellors Working Party meets regularly in its specific ‘sanctions formation’, reinforced with experts if necessary. One of its mandates is to exchange information with third states, international organisations and NGOs as appropriate, on the implementation of targeted sanctions and take any appropriate action.

The impact of sanctions on the general population is also considered. The ongoing political situation in Burma is closely monitored, with particular emphasis on any improvements or deterioration in the situation on the ground. Our Embassy in Rangoon plays a key part in providing this information and we consult a range of NGOs active inside and outside the country.

A separate humanitarian impact study is also currently being considered by the Council.

The EU regularly engages with China at a senior level on the situation in Burma. The most recent EU-China summit in Beijing on 28 November issued a Joint Statement which included the following paragraph:

“The EU and China confirmed their full support for the good offices efforts of Prof Ibrahim Gambari, Special Advisor of the UN Secretary General, with a view to advancing democracy in Myanmar. Both sides agreed on the need to see tangible progress in the domestic process, with dialogue among the parties concerned.”

6 March 2008

Restrictive Measures Against Uzbekistan: Review of Travel Ban

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

As described in my Explanatory Memorandum on the above document, the EU is currently reviewing its visa ban on Uzbekistan. I am writing to provide your Committee with further information on the issue.

The draft Council Common Position which I have deposited with the Explanatory Memorandum has been prepared ahead of the General Affairs and External Relations Council on 29 April. The Government believes that continued suspension of the visa ban, backed up by a strong Council statement on the areas in which the EU would like to see further positive progress, is the best approach to ensure continued Uzbek co-operation on human rights issues. It recognises the positive progress made in the six months the visa ban has been suspended. As mentioned in my Explanatory Memorandum, this progress could arguably be attributed to the
suspension of the visa ban—there has been more progress in this six month period than in any other similar period since the sanctions were first imposed.

We have argued that we would be prepared to support continued suspension of the visa ban subject to the Presidency using the EU Troika—Central Asia Foreign Ministers’ meeting in Ashgabat on 9-10 April to encourage further progress. The Presidency duly raised EU concerns and encouraged the Uzbeks to make further progress before the Council on 29 April. The Uzbeks confirmed that they are prepared to hold the next round of the EU-Uzbekistan Human Rights Dialogue under the Slovenian Presidency.

However, there is currently no consensus on the visa ban. Several Members States have said that they do not consider there has been enough progress from Uzbekistan and that the visa ban should be automatically re-applied. It is possible that agreement may not be reached before the 29 April Council meeting. Were this to occur, the visa ban as set out in Common Position 2007/734/CFSP would be re-imposed. A new Common Position would not be necessary in this case.

I will write again with further information following the Council on 29 April.

17 April 2008

Letter from the Chairman to Jim Murphy MP

Thank you for your letter of 17 April and your Explanatory Memorandum of the same date which were considered by Sub-Committee C at their meeting on 24 April. The document was cleared from scrutiny.

We look forward to hearing the outcome of the deliberations on the travel ban at the 28/29 April GAERC, as you suggest in your letter.

28 April 2008

SECURITY AND DEVELOPMENT: FOOD FOR THOUGHT TO STRENGTHEN EU POLICY COHERENCE

Letter from the Chairman to Gareth Thomas MP, Parliamentary Under Secretary of State, Department for International Development

Sub-Committee C considered this document at its meeting on 11 November 2007 and cleared it from scrutiny.

The Sub-Committee expressed full support for the objectives of the paper and for the position of the Government, as expressed in your Explanatory Memorandum (EM). We particularly welcome the Government’s focus on effective implementation of the recommendations contained in the paper. We would be grateful if you could provide us with a detailed summary of the outcomes of the 19 November General Affairs and External Relations Council and if you could keep us informed of subsequent developments with regards to this paper.

14 November 2007

Letter from Gareth Thomas MP to the Chairman

Your Committee recently considered the document entitled “Joint Council Secretariat—Commission Services Working Paper on Security and Development—Food for thought to strengthen EU policy coherence.” You cleared the document from scrutiny, and asked for a detailed summary of the outcomes of the 19 November General Affairs and External Relations Council, and to be informed as to subsequent developments with regard to this paper.

I attach the Council Conclusions (not printed).8 Most importantly from the UK perspective, the Council called on the Commission and the General Secretariat of the Council, in close cooperation with Member States, to prepare an Action Plan to implement the measures set out in the Conclusions, and to submit this Plan to the Council. This will move forward under the guidance of future Presidencies and we will be working with the Slovene and French Presidencies, and indeed the Commission and Council Secretariat, to ensure this happens.

I would also highlight in the Conclusions the following practical actions of importance to the UK:

— Intensified cooperation in particular with the United Nations and the African Union with specific reference to the Joint Statement on EU-UN Cooperation in Crisis Management and the Joint EU-Africa Strategy. This recognises both the important leadership role of the UN in security and development and the EU’s crucial role in supporting the AU.

— Intensified cooperation within and between Council bodies, Commission services and Member States, in particular through joint analyses, planning, training and implementation.

— Greater focus on conflict prevention as a priority goal, in particular through systematic conflict-sensitive assessments and analysis in preparing EU country and regional strategy papers and through cooperation with civil society, NGOs, local authorities and the private sector.

— Joint planning between Council bodies and Commission services in the preparation of Common Foreign and Security Policy (CFSP)/European Security and Defence Policy (ESDP) activities.

— Joint Council/Commission security sector reform (SSR) assessments and training (based on OECD DAC SSR principles) and joint efforts to build SSR capacity in regional organisations.

— Systematic consultation with humanitarian actors in the planning of ESDP missions, including deployment of civil-military coordination officers where and when necessary.

As a first step, the Council called for an analysis in a few countries where ESDP missions are being planned or conducted, or where CFSP, Community and Member State activities are being conducted, in order to improve the sequencing and coordination of EU activities. We will also be working with the Commission, Council Secretariat and other Member States on this analysis.

10 December 2007

STABILISATION AND ASSOCIATION AGREEMENT AND INTERIM AGREEMENT WITH THE REPUBLIC OF SERBIA (15616/07, 15690/07)

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

Sub-Committee C considered the above document at its meeting on 17 January and cleared it from scrutiny. Members expressed interest in continuing to follow closely developments leading up to the signature of the proposed Stabilisation and Association Agreement with Serbia and would like to know how the Government intends to pursue Serbia’s compliance with the conditions set by the Council, in particular its obligation to cooperate fully with the International Criminal Tribunal for the former Yugoslavia.

18 January 2008

Letter from Jim Murphy MP to the Chairman

I am writing to update you on developments concerning Serbia’s Stabilisation and Association Agreement (SAA), on which I submitted an Explanatory Memorandum on 7 January. I wanted to alert you to possible developments ahead of the forthcoming GAERC on 28 January.

There is an ongoing debate within the EU as to whether or not to sign Serbia’s SAA. The Presidency, supported by a number of Member States, have made clear their preference for SAA signature at the 28 January GAERC. Other Member States oppose, given their reservations about the level of ICTY cooperation from Serbia.

At the time of writing, the most likely outcome of the GAERC debate is that there will not be consensus on SAA signature. Instead, the Presidency intend to create a Task Force, whose role would be to assist Serbia in their efforts to meet the conditions necessary for further progress in the EU. The composition of the Task Force is yet to be determined, but would be likely to include the current and incoming Presidency, the Council Secretariat and the Commission.

From the Government viewpoint, our approach will be guided by recognition of the need to demonstrate to Serbia the EU’s commitment for its European perspective, while at the same time recognising we are fully committed to ICTY conditionality, which must remain firmly embedded in the EU accession process.

Given the pace at which this issue is evolving, it is possible that developments will take place rapidly. I will endeavour to keep the Committee up to speed as the debate unfolds.

23 January 2008

Letter from Jim Murphy MP to the Chairman

I am writing to further update you on developments concerning Serbia’s Stabilisation and Association Agreement (SAA), on which I submitted an Explanatory Memorandum on 7 January and wrote to you on 23 January. I wanted to respond to your letter of 18 January and to alert you to progress at and following the General Affairs External Relations Council (GAERC) on 28 January.
My letter of 23 January underlined the ongoing debate in the EU on whether or not to sign Serbia’s SAA and that the most likely outcome was that there would not be consensus on SAA signature. In the event, rather than signing the SAA, the GAERC invited Serbia to sign an interim Political Agreement. I attach the latest draft of that agreement (not printed) along with an Explanatory Memorandum (not printed).

The UK Government fully endorses the invitation as well as the Political Agreement itself. The Agreement is primarily political in nature, seeking to highlight the areas in which the EU will work to deepen its relations with Serbia. It is not an agreement to which the Scrutiny Reserve Resolution applies. However, in view of your interest in the agreement we thought it might be helpful to provide you with an Explanatory Memorandum. A Task Force will also be set up to formulate recommendations on how to achieve rapid progress in the areas set out in the Agreement. The Government believes the Agreement is an important signal of the EU’s commitment to Serbia and its desire to see Serbia continue to make progress towards the EU.

The Agreement was drawn up at short notice and was originally scheduled for signature on 7 February. However, due to internal disagreements within the Serbian Government, the Serbian side has not yet taken up the invitation to sign. We hope it will do so shortly.

In your letter you asked to be kept informed of how the Government intends to pursue Serbia’s compliance with the conditions set by the Council, in particular its obligation to cooperate fully with the International Criminal Tribunal for the former Yugoslavia. As the discussion on 28 January demonstrates, there is currently no consensus within the EU that the necessary conditions have been met for SAA signature. The Government’s position is that the political process must move forward in a way that upholds ICTY conditionality and ensures this remains embedded in the accession process.

Although the issue did not arise at the most recent GAERC, the Government would be ready—in the interest of sending a clear signal of EU commitment to Serbia’s European future—to contemplate signature of an SAA if there were clear agreement that ICTY conditionality were to remain clearly embedded in the accession process and to apply at the next relevant stage.

The Serbian Government has recently improved its co-operation with the ICTY. That co-operation has included the establishment of a National Security Council; better access to documents requested by the Prosecutor’s office; 1 million Euro reward announced for information leading to the capture of Ratko Mladic; and arrests of General Tolimir and Vlastimir Doroevic in 2007. But we believe that further improvements in co-operation are still needed. Key indictees—notably Mladic and Karadzic—remain in hiding, whilst increased political commitment and improved co-ordination by the Serbian security services are still required in order to locate them.

13 February 2008

Letter from the Chairman to Jim Murphy MP

Thank you for your letter of 13 February updating us on developments concerning Serbia’s Stabilisation and Association Agreement and replying to my letter of 18 January.

The letter was considered at Sub-Committee C’s meeting on 21 February and members were grateful for the full update in the letter and the EM. The latter was deposited too late for the sift last week but will be scrutinised formally at the meeting on 28 February. We assume that the Political Agreement was an informal document as there was no document indicating a formal Council Decision. Perhaps if a formal covering document emerges, you could let us see it.

The Sub-Committee did note in paragraph 2 of the Interim Political Agreement attached to your letter that the European Union and its Member States, and the Republic of Serbia recognise that “Serbia has a crucial role to play in the Western Balkans, both for ensuring stability and for the economic development and prosperity of the region.” The Members understand that the FCO proposes to reduce the number of officers handling economic affairs at the Belgrade Embassy, and wonder how this action can be considered compatible with the statement made on economic development in paragraph 2 of the Agreement.

In view of the importance of developments in the region, the Chairman and Members would like to invite you to give evidence on the Western Balkans, including on the Kosovo Mission, during March or April. If you agree, may I ask your officials to get in touch with the Clerk, Kathryn Colvin, on 7219 6099 colvink@parliament.uk, to arrange a mutually convenient date?

25 February 2008
**Letter from Jim Murphy MP to the Chairman**

Thank you for your letter of 25 February on Serbia’s SAA and Political Agreement.

In your letter you asked whether the text of the Interim Political Agreement (IPA) was adopted following a formal Council Decision. As you indicate, this was not a formal, legal agreement and was not the subject of a formal Council decision. Its conclusion and key elements were proposed as an annex to the GAERC Conclusions of 28 January. The final text was subsequently agreed by COREPER on 30 January and circulated to Member States as Council document on 4 February (document attached) (not printed).

You expressed concern about the reduction in capacity at the British Embassy in Belgrade. I can reassure you that there are currently no plans to reduce staffing levels dealing with economic affairs at the Embassy.

Thank you for your invitation to give evidence on the Western Balkans to the Select Committee. I understand that my office and the FCO’s Parliamentary Relations Team is in touch with the Clerk of the Committee to arrange a suitable time.

17 March 2008

**Letter from Jim Murphy MP to the Chairman**

I am writing to update you further on developments concerning Serbia’s Stabilisation and Association Agreement (SAA), on which I submitted an Explanatory Memorandum on 7 January and wrote to you on 23 January and on 13 February 2008. I have noted the Committee’s interest in this issue and wanted to alert you to possible developments ahead of the forthcoming General Affairs External Relations Council (GAERC) on 29 April.

At the time of writing, it seems possible that there will be consensus on SAA signature at the GAERC. The Presidency, supported by a number of Member States, have made clear their preference for SAA signature at the 29 April GAERC.

Our strategic goal for the Western Balkans region is for the countries of the region to move towards EU and NATO membership. We see this as the long-term answer to the instability that dogged the Balkans in the 1990s, and the best way to embed democracy and development in the region. Serbia is central to the economic and political progress of the Western Balkans. Serbia is currently faced with a strategic choice regarding its future with Parliamentary elections to be held on 11 May. For all these reasons, it is strongly in our interests that Serbia sustains its commitment to its European perspective.

As we have stated in previous correspondence, the Government would be ready—in the interest of sending a clear signal of EU commitment to Serbia’s European future—to sign Serbia’s SAA if there were clear agreement that ICTY conditionality were to remain clearly embedded in the accession process.

Although there has been some progress in Serbia’s co-operation with the ICTY over the last year we believe that further improvements in co-operation are still needed. Key indictees—notably Mladic and Karadzic—remain in hiding, whilst increased political commitment and improved co-ordination by the Serbian security services are still required in order to locate them. It is for that reason that we will be insisting on a clear message that full cooperation with ICTY is a requirement for EU accession and must remain a key part of the accession process.

Should the EU be in a position to reach consensus on SAA signature or on a political agreement to sign an SAA at a later stage, the UK would join that consensus. I know that your Committee has already cleared these documents but I wanted to ensure that you are kept fully informed of developments and of the Government’s approach.

28 April 2008

**UK-EU BATTLEGROUP CERTIFICATION EXERCISE**

**Letter from the Rt Hon Des Browne MP, Secretary of State, Ministry of Defence, to the Chairman**

When you saw MOD officials to take evidence on developments in European defence in November you expressed an interest in observing the exercise in which we will certify the capability of the Battlegroup that we are contributing to the European Union roster in the second half of this year. I am now very pleased to be able to invite members of your Committee to observe the exercise, which is being held at Salisbury Plain, on Monday, 12 May 2008. This would be as part of a visit that has been arranged for Military representatives from EU member states.
This would be a good opportunity for the Committee to increase its understanding of the EU Battlegroup concept as well as the UK’s contribution to the Battlegroup roster. In addition to observing the Battlegroup undertaking manoeuvres you would be briefed on the UK’s approach to training and certification and have the opportunity to participate in a short seminar with key staff from our Force Headquarters. Officials from the Ministry of Defence would also be present.

I should emphasise that the visit has been set up as a working session for military observers but we would welcome participation from up to six members of your Committee alongside those observers if you would like to take part on this basis. Much of the day will be spent in the field and participants would need to bring clothing and footwear appropriate to the conditions at the time.

Perhaps you could confirm to my office whether members of your Committee are interested in participating. If so, I will ask an officer from the UK’s Permanent Representation to the EU to contact your Clerk to arrange the details.

20 March 2008

WEAPONS OF MASS DESTRUCTION: PROLIFERATION

Letter from Kim Howells MP, Minister of State, Foreign and Commonwealth Office, to the Chairman

The European Council endorsed the following text on 10 December 2007:

*Six Monthly Progress Report on the implementation of the EU Strategy against the Proliferation of Weapons of Mass Destruction.*

I am writing to submit this document to your committee for information, in response to your request of 18 November 2005 to Douglas Alexander.

The progress report focuses on relevant developments and trends in EU Counter-Proliferation work rather than repeating all the items mentioned in the original Strategy.

Your Committee has previously shown interest in the EU Weapons of Mass Destruction Monitoring Centre and requested that we provide updates on its progress. You will note from the Progress Report that during the last six months the Centre has continued its work through regular meetings called by the Personal Representative of the High Representative for the Common Foreign and Security Policy. The meetings, which brought together various experts from the Council Secretariat and the Commission, included discussions on a number of subjects including Chemical, Biological, Radiological and Nuclear (CBRN) risks and bio-preparedness, multilateral nuclear approaches and export controls.

The Progress Report draws attention to the EU’s continuing support of various international organisations and multilateral treaties through a number of specific projects. These have included continuing active support of a programme of activities to mark the 10th Anniversary of the Chemical Weapons Convention/Organisation for the Prohibition of Chemical Weapons. The Council adopted a new Joint Action in support of International Atomic Energy Agency monitoring and verification activities in the Democratic People’s Republic of Korea. In addition, the Council continued its support for the Comprehensive Nuclear-Test-Ban Treaty Organisation with the adoption of a new Joint Action aimed at enhancing its verification and monitoring capabilities.

The Council is to adopt a Joint Action in support of the World Health Organisation in the area of bio-safety and bio-security in the context of the Biological and Toxins of a new Joint Action aimed at enhancing its verification and monitoring capabilities.

The report recommends that the version of the “List of priorities for the implementation of the EU WMD Strategy” be updated in a few months, in the light of international developments and of internal reflections on the use of the Stability Instrument.

We think that this is a useful paper, which shows reasonable progress and development against the initial EU WMD strategy. It reflects substantial UK input and in general supports our Counter-Proliferation policies.

4 February 2008
**Letter from the Chairman to Kim Howells MP**

Thank you for your letter of 4 February informing us of the Six Monthly Progress Report on Implementation of the EU Strategy against the Proliferation of Weapons of Mass Destruction. This was considered by Sub-Committee C at their meeting, 21 February.

I would be grateful if you would let us know whether EU Member States cooperate on the subject of students from difficult countries who wish to study sensitive subjects in EU countries. If so, how effectively does this cooperation operate?

26 February 2008

**Letter from Kim Howells MP to the Chairman**

Thank you for your letter of 26 February regarding our update on the EU Strategy against the Proliferation of Weapons of Mass Destruction. You asked whether EU Member States co-operate on the subject of students from difficult countries who wish to study sensitive subjects in EU countries.

We encourage all EU partners to consider implementing similar vetting schemes for students, but as yet there is no consistency across all EU member states and some do not have any such scheme. At present we do not actively co-operate with EU partners, but are looking into this as an area for future co-operation, in particular for those students who participate in EU-funded courses, eg Erasmus students.

20 March 2008

**Letter from the Chairman to Dr Kim Howells MP**

Thank you for your letter of 20 March 2008 in response to my letter of 26 February on the subject of vetting students from difficult countries who wish to study sensitive subjects in EU countries, and cooperation with EU partners on this subject.

Sub-Committee C considered the letter at its meeting of 27 March. Members were most interested to hear about the current situation on this important subject and would be grateful if you would keep them in touch about progress in this field.

31 March 2008

**WESTERN BALKANS: ENHANCING THE EUROPEAN PERSPECTIVE (7702/08)**

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

Sub-Committee C considered this document at their meeting of 3 April 2008 and cleared it from scrutiny. We hope to be able to discuss the situation in the Western Balkans with you at a future evidence session. My staff will be in touch with your office to make the necessary arrangements.

3 April 2008
Environment and Agriculture (Sub-Committee D)

20 20 BY 2020: EUROPE’S CLIMATE CHANGE OPPORTUNITY (5866/08)

Letter from the Chairman to Phil Woolas MP, Minister for the Environment, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum on the above proposal was considered by Sub-Committee D at its meeting of 19 March 2008.

We very much welcome EU Member States’ intention to take the lead in reducing greenhouse gas emissions, developing low-carbon technologies, and pushing for a global climate change agreement.

While we are clear on the need to reduce greenhouse gas emissions, and strongly support a binding target in this regard, we are concerned that setting legally-binding renewable energy targets for each Member State may not be the most efficient and effective way of achieving the necessary emission reductions. We would therefore be interested to hear why a prescriptive (as opposed to technology-blind, or at least even-handed) approach has been adopted in this respect. We also invite you to comment on why the UK has chosen to support an EU measure that affects its energy mix, and which it would therefore have had the right to veto.

You may wish to be aware that the EU Sub Committee B has recently launched an inquiry on the EU’s renewable energy target, on which your colleagues at the Department for Business, Enterprise and Regulatory Reform are taking the lead.

While we are content to raise our queries and concerns about the major legislative elements of the package in response to the individual Explanatory Memoranda you have supplied, we would be grateful if you could comment on the non-legislative aspects of the policy strategy set out in this Communication, such as the guidelines on state aid for environmental protection. Finally, we would welcome your views on the energy efficiency element of the package, and on the decision to adopt a non-binding target in this regard.

We will await clarification on the above points, and in the meantime retain this Communication under scrutiny.

20 March 2008

Letter from Phil Woolas MP to the Chairman

Thank you for your response to our EM 5866/08 on the EU Commission’s Communication: Europe’s Climate Change Opportunity.

You raised queries relating to the renewable energy targets and energy efficiency elements of the package and asked for comments on the environmental aid guidelines. I will address each in turn.

In your letter you raise concerns that the binding renewable energy targets may not be the most efficient and effective way of reducing emissions. The Government is committed to the EU renewable energy target as part of the wider climate and energy package and the move towards a low carbon economy.

The Stern Review recommended that broad, long term policies be put in place to be sure we can meet emission reductions at least cost by 2050. It recommended a three legged approach to reduce carbon emissions in the long term through carbon pricing, raising the level of support for R&D and demonstration projects, and action to remove barriers to energy efficiency and behavioural change. The report concluded that we can not rely on carbon price alone to pull through the technology we need for long term carbon reductions. Policy on technology development needs to complement it as there are many uncertainties and risks associated with technology development that cannot be incentivised by carbon price alone.

By 2050 we will need to have largely, if not completely, decarbonised the electricity generation sector if we are to meet our 60% carbon reduction target. We will also need to have made significant progress in other sectors, including transport, where currently abatement options are relatively expensive. The renewables target will facilitate the step change required in shifting towards a low carbon energy future.
There has been rapid decline in global spending on energy technology overall in the last few decades which has hampered development of new technologies this decade, including renewables. It is critical that we build up public and private investment in low carbon technology development if we are to have a chance of meeting a 2050 target of around 60–80% global CO$_2$ cuts at least cost.

Supporting renewables through a targeted policy on technology development and supplemental support such as the Renewables Obligation to meet a 2020 target is therefore in line with the recommendations Stern has made for a long term efficient approach to reducing emissions. While we accept that many renewable energy technologies do not at present represent the most cost effective way of reducing emissions, as we develop the technologies, their unit costs should decline as a result of scale and learning economies. Renewable energy can also improve geo-political security of supply and deliver business, employment and innovation benefits.

Turning to the energy efficiency targets, Government strongly supports the energy efficiency element of the climate change package and the target of improving energy efficiency within the EU by 20% by 2020. The non-binding nature of the energy efficiency target and the fact that the target will not be apportioned amongst Member States in the same manner as the renewables and greenhouse gas targets reflects the fact that Member States have only recently adopted (2006) an indicative energy-saving target under the EU Energy End-Use Efficiency and Energy Services Directive. This Directive requires each Member State to deliver energy savings equivalent to 9% of average primary energy consumption through energy efficiency improvement measures over the period to 2016 and to put in place national action plans setting out how they intend to reach the target. The possible extension of the targets beyond 2016, and the nature and level of the targets in the Directive, will all be reviewed by the Commission in 2012. The UK Action Plan was submitted to the Commission in June 2007.

In addition, in 2006 the EU adopted an EU-wide Energy Efficiency Action Plan that will see a number of legislative and other measures coming forward over the next five years intended to realise the potential for 20% improvements in energy efficiency—it is this potential for energy efficiency and the proposals set out in the Action that formed the basis of the target subsequently adopted in the climate change package. The UK has called for rapid and ambitious implementation of the Action Plan which includes key specific proposals for action on vehicle efficiency, the energy performance of buildings, and standards and labelling for energy-using products amongst others.

Lastly, on the new environmental aid guidelines, the Government welcomes the guidelines which set out the terms under which Member States can grant aid to businesses for environmental protection purposes. The guidelines incorporate some significant amendments in response to the concerns expressed by the UK, and others, during consultation, in particular the new guidelines provide scope for up to 100% aid intensities in cases where aid is allocated through a competitive process, and more generally raise the standard rates available under the old rules for aid schemes where a competitive process option will not apply. The new guidelines also set out the Commission’s support in principle for large carbon capture projects although the aid involved will have to be examined on a case by case basis. The new guidelines are expected to come into force at the end of April.

3 April 2008

AGRICULTURAL STATISTICS: AERIAL SURVEY AND REMOTE SENSING TECHNIQUES

(11670/07)

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

Thank you for your letter dated 10 October 2007$^1$ on the Explanatory Memorandum regarding the above proposal that was considered by Sub-Committee D at its meeting on the same date.

You had questioned whether the European Agricultural Guarantee Fund (EAGF) was the most appropriate source of funding and if it were to remain so, whether Article 5(a) might better reflect the potentially broader benefits.

As to whether remote sensing work should be funded from the EAGF or elsewhere, Article 66 of Regulation 1698/2005 already allows for limited funding for such work from the European Agricultural Fund for Rural Development (EAFRD) budget. However, using the EAFRD budget to finance remote sensing operations would mean that less funding would be available to farmers and other beneficiaries under rural development schemes.

$^1$ Correspondence with Ministers, 11th Report of Session 2008–09, HL Paper 92, p 137.
The question the Committee raises about whether Article 5(a) should apply, rather than Article 3.2(e), is one that we have raised with the Commission. The explanation provided is that reference to Article 3.2(e) is consistent with the funding approach used for previous remote sensing activities and in particular Article 3.2 can be executed with dissociated credits and that only actions financed on the basis of Article 3.2 can be executed with dissociated credits. In practice this means that such earmarked revenue is entered in the budget at the same level for commitments and payments, although the execution of the commitments can be implemented in the later years. Any earmarked revenue remaining unused at the end of the year is carried forward automatically.

Additionally the EAGF is used to fund a range of statistical work, primarily the Farm Structure Survey with Article 3(2)e being the relevant reference. This survey provides data on land use but the data can be used for agri-environmental purposes also, so in line with data collected via remote sensing. It would remain consistent if the remote sensing work were to continue to be funded under the EAGF with reference made to Article 3(2)e.

24 November 2007

Letter from the Chairman to Lord Rooker

Your letter of 29 November on the above Proposal was considered by Sub-Committee D at its meeting of 12 December 2007.

We are grateful for the information that you provide on the legislative basis for the financing of these measures. In my letter of 10 October, we shared your view that further information was required from the Commission on its work programme and on the likely benefits of that plan. You have not commented on the matter but we understand that the Commission will be open to entering into regular dialogue on the work that is undertaken. We would be grateful if you could clarify what commitment the Commission has made in this regard and we would urge you to work with the Commission to ensure that the benefits of the technology are maximised.

We are now content to release the proposal from scrutiny and look forward to your comments on the point raised above.

14 December 2007

Letter from Lord Rooker to the Chairman

Thank you for your letter dated 14 December where you asked for further comments relating to the Explanatory Memorandum for the above Proposal that was considered by Sub-Committee D at its meeting on 12 December.

The concern about the lack of information or consultation on a detailed work plan is an issue that was shared by several other Member States. The UK raised this point when the proposal was discussed at the meeting of the Special Committee on Agriculture in November. As a result of this, and similar interventions by other Member States, the Commission did agree to return to implementing issues at an appropriate working group level. This will provide the opportunity for detailed discussion and agreement of a suitable work plan so that we can ensure appropriate coordination of work and where benefits are clearly assessed against alternatives. Through this route we will work with the Commission and other Member States so that the wider benefits of this technology are maximised and that technical solutions being put forward adequately meet out needs. In addition there are specific measures within the Articles of the proposal for reporting on the work undertaken.

3 January 2008

AMBIENT AIR QUALITY AND CLEANER AIR FOR EUROPE (14335/05)

Letter from Jonathan Shaw MP, Minister for Marine, Landscape and Rural Affairs and Minister for the South East, Department for Environment, Food and Rural Affairs, to the Chairman

I am writing to update you on progress with regard to the proposed European Parliament and Council Directive on ambient air quality and cleaner air for Europe, and in particular, the outcome of the European Parliament’s Second Reading.

These amendments are currently being scrutinised by the legal linguists of the Council and Parliament, and the Council should be in a position to approve them in May/June 2008. Once the Directive comes into force, Member States have two years in which to transpose it into national legislation.

A priority for the UK Government was to maintain the Common Position’s limit value for PM$_{2.5}$—25 µg/m$^3$ to be met by 2015. This was achieved, but with the addition of a second stage indicative limit value of 20 µg/m$^3$ to be met by 2020. The appropriateness of the second stage limit value will be reviewed by the European Commission in 2013. A new PM$_{2.5}$ limit value that applies as an average over sampling points at urban background locations—termed the Exposure Concentration Obligation—was also agreed. This will work in tandem with the National Exposure Reduction Target, which requires that Member States work towards a percentage reduction in PM$_{2.5}$ levels at urban background locations.

Details of all of the compromise amendments can be found at Annex A (not printed).

In overall terms, the UK Government is supportive of the Common Position and Second Reading compromise amendments. They balance well flexibility for Member States in implementation and better regulation principles, with firm obligations that implement the advice from the World Health Organisation (WHO) regarding the control of fine particulate matter (PM$_{2.5}$).

29 February 2008

ANIMAL HEALTH STRATEGY 2007–2013 (13292/07)

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

Your Explanatory Memorandum on the above Strategy was considered by Sub-Committee D at its meeting of 14 November.

We agree with the Government that the principles and objectives of the Strategy are sound, but that any specific legislative proposals will need to be considered on their merits.

We are content to release the Strategy from scrutiny.

14 November 2007

BIOCIDAL PRODUCTS DIRECTIVE (5224/07)

Letter from Lord McKenzie of Luton, Parliamentary Under Secretary of State, Department for Work and Pensions, to the Chairman

You will have seen earlier in 2007 a joint Explanatory Memorandum (5224/07—cleared in the Chairman’s sift of 13 March 2007) informing the Committee of the content and implications of a proposal published by the European Commission (EC) for a Directive to amend the procedures by which the EC prepares and takes decisions on the inclusion of newly assessed active substances, potentially contained in biocidal products, in the Annexes of the EC’s extant Biocidal Products Directive 98/8/EC (“the BPD”). I attach at Annex A of this letter a brief explanation of the main points of the BPD.

The UK lead on the BPD sits with the Health and Safety Executive (HSE), for which I have responsibility. The purpose of this letter is to inform you of the adoption on 14 November 2007 by the European Parliament (EP) of the text of the proposal for a Directive amending the BPD. A copy is at Annex B (not printed).

The proposal amends the BPD in accordance with Decision 2006/512/EC of the EP, the Council and the Commission, which amends the comitology procedures in order to give the EP a similar right of scrutiny of decisions taken under the BPD as that of the Council. The amendments are of a technical nature concerning only the EC’s own committee procedures and do not need to be transposed by national legislation.

The original proposal included limiting the timescale to one month within which the EP can oppose decisions for Annex I inclusion, so that the EC can meet its obligation under Article 11(4) of the BPD to make such decisions within 12 months of receiving evaluations from Rapporteur Member States. The text adopted on 14 November reinstates the time limit to three months.

This is a balanced proposition, and so the UK has not raised objections to the proposals. Whilst the improved rights for the EP might be expected to add more pressure to an already complex and time limited process under the BPD, this is offset by the relatively restricted time limit within which they can oppose decisions for Annex I inclusion.

17 December 2007

THE BIOCIDAL PRODUCTS DIRECTIVE 98/8/EC

Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market—commonly known as the “Biocidal Products Directive” (BPD) or simply the “biocides directive” entered into force on 14 May 2000. Its two central objectives are to:

— harmonise the European market for biocidal products and their active substances so that once a product is authorised in one Member State under the Directive that authorisation can be recognised in the other Member States; and

— provide a high level of protection for people, animals and the environment.

The scope of the BPD is very wide, covering 23 product types including disinfectants for home and industrial use; preservatives for manufactured and natural products; non-agricultural pesticides for use against insects, rodents and other vertebrates and specialised products such as embalming and taxidermist fluids and antifouling products.

The BPD does not apply to products regulated under certain other European Directives including plant protection products, human medicines, veterinary medicines, medical devices or cosmetics.

Ultimately only those biocidal products containing an active substance that is included in Annex 1 of the Directive will be authorised for use. Active substances have to be evaluated to ascertain whether or not they will be included in Annex 1. This requires industry to submit data which are evaluated by Member States with decisions over Annex I inclusion being taken at the European level. Industry is charged a fee for this process. Once an active substance has been included in Annex I, national CAs can authorise relevant products containing it in individual Member States.

Biocidal active substances on the market when the BPD came into force have to be reviewed to ensure they can be used without unacceptable effects to people or the environment, following which individual products containing them have to be authorised. These biocidal active substances are referred to as ‘existing’. The programme for the review of ‘existing’ biocidal active substances is controlled by a series of EU Commission Regulations. The review is expected to last 10 years.

Each Member State (MS) is responsible for implementing the BPD. In Great Britain it is implemented through the Biocidal Products Regulations 2001, which came into force on 6 April 2001, and in Northern Ireland by the Biocidal Products Regulations (Northern Ireland) 2001. Each MS is also responsible for establishing a Competent Authority (CA) to carry out the work under the Directive. HSE performs the CA duties for the UK.

BIOFUELS PROGRESS REPORT (5389/07)

Letter from Jim Fitzpatrick MP, Parliamentary Under Secretary of State, Department for Transport, to the Chairman

Your letter of 19 March 2007 to Stephen Ladyman gave the Select Committee’s scrutiny clearance for document 5389/07, the European Commission’s Biofuels Progress Report of 10 January 2007. You asked about the Government’s position on some of the issues raised by this report. Biofuels is a fast-developing area, but in the light of recent legislative proposals by the Commission, and of Ruth Kelly’s recent announcement of a review on the wider economic and environmental impacts of biofuels, this may be an appropriate time to bring the Committee up to date with the Government’s views.

On the development of fuel obligations as a tool to promote the use of biofuels, this is of course the route we have chosen in the UK. The Renewable Fuels Agency has been set up to administer the Renewable Transport Fuel Obligation (RTFO), which comes into force on 15 April. The draft Renewable Energy Directive (EM 5421/08, currently under consideration by Sub-Committee B), which will supersede the existing EU legislation on biofuels, refers to obligations of this sort as a way for Member States to promote the use of biofuels, but it does not require them. In line with the principle of subsidiarity, we agree that Member States should be free to decide whether to give support to biofuels—and, if so, by what means—so long as the rules of the internal market and similar requirements are met.

We agree wholeheartedly with the Committee that robust sustainability criteria for biofuels are essential. We also firmly support the European Council’s decision that the binding nature of the biofuels target should be subject to the availability of sustainably-produced biofuels: otherwise, as the Committee points out, biofuels could have a worse impact on climate change than fossil fuels. From day one of the RTFO, fuel suppliers will

\(^3\) Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 205.
be required to report on the carbon saving and sustainability characteristics of their biofuels. The Commission has proposed some sustainability criteria for the Renewable Energy Directive, mainly to do with preventing undesirable changes of land use. In high-level negotiations in the EU we are pressing for the criteria to be extended to cover a wider range of environmental and social issues (as do the reporting requirements in the RTFO). The review of the wider impacts of biofuels which Ruth Kelly announced on 21 February will contribute to this, particularly in regard to the displacement effects of biofuels, including the effect on greenhouse gas emissions. It is essential that the sustainability criteria should also be applied to the greenhouse gas reduction target proposed for inclusion in the Fuel Quality Directive, since such a target could be met only with a very large contribution from biofuels.

Your final point was on support for second-generation biofuels. The Government recognises the potential benefits of technologically advanced biofuels. We have announced our aim that rewards under the RTFO should be put on a carbon saving basis from April 2010: this will be a major incentive in the development of second-generation biofuels, which generally offer greater greenhouse gas savings; they also tend to use less land, and do not compete directly with food production. The draft Renewable Energy Directive includes a proposal that biofuels produced from wastes, residues, non-food cellulosic material, and lingo-cellulosic material should receive double rewards under national renewable energy obligations. The condition on the commercial availability of second-generation biofuels does not appear, but has been reiterated by the recent European Council. The proposals will need to be considered in this light.

We are giving support to low carbon and energy efficiency technologies through the new Environmental Transformation Fund. We also provide support for the work of the National Non-Food Crops Centre, which helps to promote the development of new technologies in areas such as biomass and biofuels.

8 April 2009

BLUEFIN TUNA: MULTI-ANNUAL RECOVERY PLAN (8308/07)

Letter from the Chairman to Jonathan Shaw MP, Minister for Marine, Landscape and Rural Affairs and Minister for the South East, Department for Environment, Food and Rural Affairs

Thank you very much for the letter of your predecessor, Ben Bradshaw MP, dated 26 June 2007, which was considered by Sub-Committee D at its meetings of 11 July 2007 and 14 November 2007.

We regret that the 11–12 June Council was unable to reach a wholly satisfactory conclusion regarding the issue of payback. Nevertheless, the Council and Commission Statement that was adopted to accompany the Regulation implementing the ICCAT Recovery Plan in the short-term is welcome. We trust that you and your officials will seek to ensure that the policy expressed in the Statement is actually applied.

We are grateful for Mr Bradshaw’s comments on enforcement and we are pleased to note that the UK Government and officials will be following developments as closely as possible in terms of the efficacy of the plan. The Committee has observed the European Commission’s recent action against seven Member States for failure to meet their control and enforcement obligations under existing bluefin tuna regulations and we trust that you will be emphasising to other Member States the importance that the UK places on a sustainable, well controlled and enforced Common Fisheries Policy.

We note that an ICCAT meeting was due to be held 9–18 November and we would be interested to learn what views were expressed at that meeting on the application of the recovery plan in its first year.

In the light of the above comments, we are now content to release the Proposal from scrutiny.

14 November 2007

Letter from Jonathan Shaw MP to the Chairman

Thank you for your letter of 14 November regarding the multi-annual recovery plan for Eastern Atlantic bluefin tuna.

It is clear that there have been failures in implementation of the recovery plan this year. This is reflected in the overfish for 2007 declared by France and Italy. This provided an early opportunity to test the Council Commission statement on overfishing which was adopted in June. When I became aware of this year’s overfish I took this issue up personally with the Fisheries Commissioner, and received assurances from him that payback would be made.

4 Correspondence with Ministers, 11th Report of Session 2008–09, HL Paper 92, p 139.
I am pleased to report that the Commission subsequently proposed a responsible approach to the overfishing. This resulted in ICCAT agreeing payback at 100% of the amount overfished over three years starting in 2009. Whilst I would have preferred the repayment to start in 2008, delaying repayment for a year is consistent with ICCAT rules. I can also assure you that the UK has regularly emphasised the importance it places on control and enforcement, and will continue to do so whilst the issue is under my remit.

Implementation of the bluefin tuna recovery plan and terms of ‘payback’ for the European Community formed a significant part of discussion at the ICCAT meeting in November, with concern expressed by several parties. The European Commission explained the poor implementation in terms of the late entry into force within the Community this year, and argued that the plan needed to be in place for a full year before its efficacy could be judged. Whilst, in theory, I would have liked to see the plan made stronger in favour of the scientific advice, there was clear majority Member State support behind leaving a review of the plan until next year. This majority opinion was further present among ICCAT contracting parties. So as stipulated in the recovery plan, a review of its efficacy will take place at the 2008 meeting on the basis of a scientific assessment.

In response to the implementation failures, the USA proposed a moratorium on fishing for the stock. However this only received support from Canada, probably because of the stark socio-economic effects of a moratorium and there being no scientific advice to support such a measure. Turkey also proposed an amendment to the plan involving a reduction in total allowable catch, but this did not receive much support.

ICCAT did adopt a recommendation providing for national implementation reports and a stakeholder meeting to facilitate communication between buyers and sellers, with a view to improving implementation of the plan and agreeing voluntary actions to reduce the production of bluefin through farming. ICCAT also adopted a comprehensive catch documentation scheme for bluefin tuna which also aims to improve compliance in the fishery.

Whilst the two aforementioned measures which were adopted are positive, the situation on the stock remains of serious concern. Therefore, I expect the UK, as it has done in the past, will take a strong interest in the negotiations in 2008, when a full review of the plan will take place.

14 January 2008

CAP HEALTH CHECK (15315/07)

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

Your Explanatory Memorandum (EM) on the above Communication was considered by Sub-Committee D at its meeting of 16 January 2008.

As you are aware, the Committee is currently undertaking an Inquiry into the Health Check. We will therefore hold the Communication under scrutiny until our Inquiry has been completed.

16 January 2008

CARBON CAPTURE AND STORAGE (5835/08)

Letter from the Chairman to Malcolm Wicks MP, Minister of State for Energy, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum on the above proposal was considered by Sub-Committee D at its meeting of 19 March 2008.

We warmly welcome the decision to promote the development and deployment of CCS technology, which we regard as a vital component of any attempt to stem carbon dioxide emissions.

We note that the draft Directive is at a very early stage in the legislative process, and expect that some of the concerns you raise will be addressed in the course of European Parliament and Council negotiations. We are not clear, however, on whether you anticipate that other Member States will share your reservations with respect to the transfer of ETS liabilities to the State, and with respect to the role of the Commission in the regulatory process. We share your concerns, and would be grateful for further clarification on these points as negotiations progress.

We also note that while an informal consultation and a stakeholder event have been conducted, no formal consultation of UK stakeholders on the proposed EU regime (rather than the domestic regime) is planned, even though the scope of the EU regime is wider than that of the proposed UK regime. We would be grateful if you could explain why you plan to proceed in this way.
Finally, we note that a comprehensive impact assessment detailing the financial implications of the draft Directive for the UK will be prepared at a later stage. We will await that assessment, and clarification on the points raised above. In the meantime, we will hold this proposal under scrutiny.

20 March 2008

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

Thank you for your letter of 20 March in which you have asked for further clarification on a number of issues. I am using this opportunity to update you as best I can at this stage.

**Role of the Commission in the Regulatory Process and Transfer of ETS Liabilities to the State**

You have asked whether other Member States share our concerns on these two issues. As you know, negotiations are at an early stage and we are at present only half way through the first round of discussions in working groups.

Articles 8 and 10 have been discussed once in working groups so far and from this discussion it was clear that opinions are divided on whether or not the Commission review of all draft CO₂ storage permits is necessary because of the variation in the level of experience of similar industries within Member States. However, it is clear that many have not thought through the implications of what would happen if the Commission’s opinion differed from their own. The Commission has indicated that in such circumstances, were a Member State not able to justify in a manner satisfactory to the Commission its reasons for acting differently to the recommendations in the Commission’s opinion it would address this through the Courts. We were not in the position of having a blocking minority for complete removal of this clause so we have therefore joined with France, Netherlands, Poland and Sweden to propose alternative wording that allows Member States the option of seeking the Commission’s opinion on draft permits without it being mandatory.

We believe that as Member States start to understand the implications of the Commission’s proposed role, we will see further support for this optional approach.

Article 18 which covers transfer of liabilities to the state has not yet been covered in these discussions. However, from informal discussions it would seem that many Member States share our concerns on this issue. We are therefore working with the Commission and other Member States to determine how the State’s liabilities can be minimised without compromising environmental objectives.

**Consultation**

We will be covering our negotiating position on the Commission’s proposal as part of the forthcoming consultation on the UK domestic regime for the storage of carbon dioxide. This follows informal consultation through a widely advertised and well attended event in February and informal meetings with industry and NGOs.

**Impact Assessment**

Finally, I am attaching to this letter an updated partial Impact Assessment with additional detail on the financial implications of the proposal for the UK. This will, of course, need to be updated as negotiations progress but will be submitted as one of the documents for the forthcoming House of Commons standing committee debate on the proposal.

28 April 2008

**CATCH LIMITATIONS (FISHING QUOTAS) 2008 (15874/07)**

**Letter from the Chairman to Jonathan Shaw MP, Minister for Marine, Landscape and Rural Affairs and Minister for the South East, 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 12 December 2007.

We note from your EM that the Government is developing alternative management measures such as real time closures and improved gear selectivity. We would appreciate further information on these developments and on whether the European Commission has taken a view on them.
Fisheries is a matter of importance to all of the Administrations across the UK and we would therefore appreciate information from you on the level of consultation that has taken place between the Administrations on developing the UK negotiating line.

Finally, we note that a number of issues, such as the practice of discarding, are highlighted by this Proposal. We are content to release the proposal from scrutiny but intend to examine some of these outstanding issues in greater detail in future.

13 December 2007

Letter from Jonathan Shaw MP to the Chairman

In your letter of 13 December 2007 on the scrutiny of the Commission’s annual quota proposals for the fisheries sector, you asked for details of the outcome of the December Council negotiations. I was joined at the Council by Fisheries Ministers representing Scotland and Northern Ireland, Richard Lochhead and Michelle Gildernew, and the UK was able to negotiate on the basis of agreed lines to take reflecting the breadth of our fisheries interests.

I am pleased to say that the UK was able to make headway on all of its key objectives. As far as possible, our line was to follow the advice of ICES (International Council for the Exploration of the Sea) and the Commission’s STECF (Scientific, Technical and Economic Committee for Fisheries). However, at the same time we sought to provide adequate fishing opportunities to ensure the long-term viability of our own fishing fleet, and where there was additional, more up-to-date information to suggest the stock situation for particular species was stronger than indicated by ICES or STECF reports, we sought appropriate adjustments. This process invariably involved a number of difficult balances.

On days at sea, we were successful in limiting some cuts in days; in the West of Scotland and in the Irish Sea, from 25% to 18% in the whitefish fleet and to 10% in the prawn fleet and there was no change in the baseline cut in days for the North Sea, at 10%. However, the UK argued successfully for an important flexibility which allows Member States to grant additional days to those fishermen who are actively seeking to avoid cod. These were based on measures masterminded by the fishing industry, including real time closures to avoid juveniles, more selective gear and individual vessel management plans designed to reduce cod bycatch.

Apart from the 11% increase in the North Sea cod TAC agreed in the EU/Norway negotiations, other cod TACs were cut by 18% in the Irish Sea and West of Scotland, and 9% in the English Channel and Western Approaches. These cuts were however reduced from the original proposal for reductions of 25% across the board.

For TACs where I believed what was proposed was out of line with abundance, we successfully argued for increases e.g. in the Irish Sea where the haddock TAC was raised by 5% and in the North Sea where the megrim TAC was increased by 8%. We also secured increases in important stocks that provide fishing opportunities where others were being cut, including a 50% increase in the TAC for Rockall haddock and a 10% increase in North Sea lemon sole.

The UK invoked Hague Preference to mitigate the effect of Irish invocations on the West coast and to mitigate severe cuts in quota for North Sea haddock and whiting; two stocks crucial to the survival of the whitefish fleets since the depletion of cod. For North Sea haddock and whiting, a lower invocation rate was sought to make to minimise the risk that other Member States fishing opportunities would be affected.

The Commission had originally proposed that a number of TACs be cut simply on the basis of historic underutilisation, or followed the ICES advice that the TAC be set at the value of recent average catches or landings (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 or increase existing TACs for a number of stocks including saithe, anglerfish, megrim, sprat and pollack in area VII, Irish Sea herring, Clyde herring, pollack in the West of Scotland, sole in Vlhihk and herring in Vllef. We also reduced the scale of cuts for West of Scotland megrim and Vlhihk plaice to 10% and West of Scotland haddock to 15% on the same basis.

Other quota increases that would positively impact UK fleets were Eastern Channel sole (6%), Celtic Sea sole (8%) and plaice (35% increase in UK quota), western horse mackerel (24%) and North Sea turbot and Brill (22%) and North Sea sprat (11%).
I attach as further background, a table listing the position for the full range of stocks of interest to the UK. We were also successful in obtaining a requirement for fishermen to provide species-specific data on catches of skates and rays with a view to more focused management measures being applied to these species in the future. Finally, we successfully resisted the Commission’s attempts to limit the flexibility available under scientific dispensations, arguing that this would act as a strong disincentive to valuable fisheries research.

22 January 2008

**ANNEX**

**Total Allowable Catches for 2008**

<table>
<thead>
<tr>
<th>Stock</th>
<th>TACs for 2007</th>
<th>Commission proposal TACs for 2008</th>
<th>% Change from 2007</th>
<th>Final TAC's for 2008</th>
<th>% Change from 2007</th>
<th>UK relative stability share (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sandeel Norwegian Waters of IV</td>
<td>No value</td>
<td>20,000</td>
<td>5%</td>
<td>116</td>
<td>0</td>
<td>43%</td>
</tr>
<tr>
<td>Sandeel IIa; EC waters of IIa &amp; IV</td>
<td>No value</td>
<td>20,000</td>
<td>2%</td>
<td>116</td>
<td>0</td>
<td>43%</td>
</tr>
<tr>
<td>Greater silver smelt EC &amp; international waters of I &amp; II</td>
<td>1,331</td>
<td>1,331</td>
<td>0</td>
<td>1,331</td>
<td>0</td>
<td>2%</td>
</tr>
<tr>
<td>Greater silver smelt EC and international waters of III and IV</td>
<td>5,311</td>
<td>5,311</td>
<td>0</td>
<td>5,311</td>
<td>0</td>
<td>6%</td>
</tr>
<tr>
<td>Tusk EC &amp; international waters of I, II &amp; XIV</td>
<td>25</td>
<td>21</td>
<td>-15</td>
<td>23</td>
<td>-8</td>
<td>28%</td>
</tr>
<tr>
<td>Tusk EC &amp; international waters of IV</td>
<td>257</td>
<td>222</td>
<td>-14</td>
<td>231</td>
<td>-10.1</td>
<td>40%</td>
</tr>
<tr>
<td>Tusk EC &amp; international waters of V, VI, VII</td>
<td>483</td>
<td>423</td>
<td>-12</td>
<td>435</td>
<td>-9.9</td>
<td>28%</td>
</tr>
<tr>
<td>Tusk Norwegian waters of IV</td>
<td>No value</td>
<td>170</td>
<td>3%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Herring IV North of 53o30'N</td>
<td>341,063</td>
<td>201,227</td>
<td>-41</td>
<td>201,227</td>
<td>-41.0</td>
<td>25%</td>
</tr>
<tr>
<td>Herring By-catches in IV, VII and in EC waters of Ila</td>
<td>31,875</td>
<td>No value</td>
<td>18,806</td>
<td>-41.0</td>
<td>2%</td>
<td></td>
</tr>
<tr>
<td>Herring EC and international waters of Vb, Vlb and VlaN</td>
<td>34,000</td>
<td>25,751</td>
<td>-24</td>
<td>27,200</td>
<td>-20.0</td>
<td>60%</td>
</tr>
<tr>
<td>Herring Vla Clyde</td>
<td>800</td>
<td>680</td>
<td>-15</td>
<td>800</td>
<td>100.0</td>
<td></td>
</tr>
<tr>
<td>Herring VIIa</td>
<td>4,800</td>
<td>4,400</td>
<td>-8</td>
<td>4,800</td>
<td>0.0</td>
<td>74%</td>
</tr>
<tr>
<td>Herring VIIe,f</td>
<td>1,000</td>
<td>1,000</td>
<td>0</td>
<td>1,000</td>
<td>0.0</td>
<td>50%</td>
</tr>
<tr>
<td>Herring VIIg,h,i,j,k</td>
<td>9,393</td>
<td>7,045</td>
<td>-25</td>
<td>7,890</td>
<td>-16.0</td>
<td>0%</td>
</tr>
<tr>
<td>Cod IV; EC waters of Ila</td>
<td>19,957</td>
<td>22,152</td>
<td>11</td>
<td>22,152</td>
<td>11.0</td>
<td>47%</td>
</tr>
<tr>
<td>Cod VI; EC waters of IV, EC &amp; international waters of XII &amp; XIV</td>
<td>490</td>
<td>368</td>
<td>-25</td>
<td>402</td>
<td>-18.0</td>
<td>53%</td>
</tr>
<tr>
<td>Cod special conditions Vla; EC waters of Vb</td>
<td>490</td>
<td>14,968</td>
<td>-25</td>
<td>402</td>
<td>-18.0</td>
<td>53%</td>
</tr>
<tr>
<td>Cod VIIa</td>
<td>1,462</td>
<td>1,097</td>
<td>-25</td>
<td>1,199</td>
<td>-18.0</td>
<td>43%</td>
</tr>
<tr>
<td>Cod VII b–k, VIII, IX, X, Cecaf 34.1.1(EC)</td>
<td>4,743</td>
<td>368</td>
<td>-25</td>
<td>4,316</td>
<td>-9.0</td>
<td>8%</td>
</tr>
<tr>
<td>Porbeagle EC waters of I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII &amp; XIV</td>
<td>No value</td>
<td>422</td>
<td>581</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Megrin EC waters of Ila &amp; IV</td>
<td>1,479</td>
<td>1,479</td>
<td>0</td>
<td>1,597</td>
<td>8.0</td>
<td>96%</td>
</tr>
<tr>
<td>Megrin VI; EC waters of Vb; international waters of XII &amp; XIV</td>
<td>2,880</td>
<td>2,448</td>
<td>-15</td>
<td>2,592</td>
<td>-10.0</td>
<td>31%</td>
</tr>
<tr>
<td>Megrin VII</td>
<td>18,300</td>
<td>15,555</td>
<td>-15</td>
<td>18,300</td>
<td>0.0</td>
<td>14%</td>
</tr>
<tr>
<td>Dab &amp; Flounder EC waters of Ia &amp; IV</td>
<td>17,100</td>
<td>15,390</td>
<td>-10</td>
<td>18,810</td>
<td>10.0</td>
<td>9%</td>
</tr>
<tr>
<td>Anglerfish EC waters of Ila &amp; IV</td>
<td>11,345</td>
<td>11,345</td>
<td>0</td>
<td>11,345</td>
<td>0.0</td>
<td>81%</td>
</tr>
<tr>
<td>Anglerfish VI; EC waters of Vb; international waters of XII &amp; XIV</td>
<td>5,155</td>
<td>5,155</td>
<td>0</td>
<td>5,155</td>
<td>0.0</td>
<td>31%</td>
</tr>
<tr>
<td>Anglerfish VII</td>
<td>28,080</td>
<td>25,740</td>
<td>-8</td>
<td>28,080</td>
<td>0.0</td>
<td>18%</td>
</tr>
<tr>
<td>Haddock IV; EC waters of Ila</td>
<td>54,640</td>
<td>46,444</td>
<td>-15</td>
<td>46,444</td>
<td>-15.0</td>
<td>78%</td>
</tr>
<tr>
<td>Haddock EC and international waters of Vlb, XII and XIV</td>
<td>4,615</td>
<td>5,307</td>
<td>15</td>
<td>6,916</td>
<td>49.9</td>
<td>81%</td>
</tr>
<tr>
<td>Haddock EC waters of Vb &amp; Vla</td>
<td>7,200</td>
<td>4,550</td>
<td>-37</td>
<td>6,120</td>
<td>-15.0</td>
<td>81%</td>
</tr>
<tr>
<td>Haddock VII, VIII, IX, X, EC waters of Cecaf 34.1.1</td>
<td>11,520</td>
<td>9,792</td>
<td>-15</td>
<td>11,579</td>
<td>0.5</td>
<td>10%</td>
</tr>
<tr>
<td>Haddock special conditions VIIa</td>
<td>1,179</td>
<td>1,002</td>
<td>-15</td>
<td>1,238</td>
<td>5.0</td>
<td>48%</td>
</tr>
<tr>
<td>Whiting IV; EC waters of Ila</td>
<td>23,800</td>
<td>17,850</td>
<td>-25</td>
<td>17,850</td>
<td>-25.0</td>
<td>53%</td>
</tr>
<tr>
<td>Whiting VI; EC waters of Vb; international waters of XII &amp; XIV</td>
<td>1,020</td>
<td>765</td>
<td>-25</td>
<td>765</td>
<td>-25.0</td>
<td>57%</td>
</tr>
<tr>
<td>Whiting VIIa</td>
<td>371</td>
<td>278</td>
<td>-25</td>
<td>278</td>
<td>-25.1</td>
<td>53%</td>
</tr>
<tr>
<td>Whiting VIIbcdelhk</td>
<td>19,940</td>
<td>16,949</td>
<td>-15</td>
<td>19,940</td>
<td>0.0</td>
<td>11%</td>
</tr>
<tr>
<td>Hake EC waters of Ila &amp; IV</td>
<td>1,850</td>
<td>1,896</td>
<td>3</td>
<td>1,896</td>
<td>2.5</td>
<td>18%</td>
</tr>
<tr>
<td>Stock</td>
<td>TACs for 2007</td>
<td>Commission proposal TACs for 2008</td>
<td>% Change from 2007</td>
<td>Final TACs for 2008</td>
<td>% Change from 2007</td>
<td>UK relative stability share (%)</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>---------------</td>
<td>-----------------------------------</td>
<td>-------------------</td>
<td>---------------------</td>
<td>-------------------</td>
<td>----------------------------------</td>
</tr>
<tr>
<td>Hake VI &amp; VII; EC waters of VI, international</td>
<td>29,541</td>
<td>30,281</td>
<td>3</td>
<td>30,281</td>
<td>2.5</td>
<td>18%</td>
</tr>
<tr>
<td>Hake special conditions VIIIabde</td>
<td>3,828</td>
<td>3,924</td>
<td>3</td>
<td>3,924</td>
<td>2.5</td>
<td>21%</td>
</tr>
<tr>
<td>Blue whiting: Norwegian waters of IV</td>
<td>1,700,000</td>
<td>1,150,514</td>
<td>-32</td>
<td>1,266,282</td>
<td>-25.5</td>
<td>5%</td>
</tr>
<tr>
<td>Blue whiting: Northern component: I, II, III, IV, V, VI, VII, IXabde, XII, XIV (EC &amp; International waters)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lemon sole &amp; witch of EC waters of IIa &amp; IV</td>
<td>6,175</td>
<td>5,558</td>
<td>-10</td>
<td>6,793</td>
<td>10.0</td>
<td>61%</td>
</tr>
<tr>
<td>Ling EC &amp; international waters of I &amp; II</td>
<td>45</td>
<td>45</td>
<td>0</td>
<td>45</td>
<td>0.0</td>
<td>22%</td>
</tr>
<tr>
<td>Ling IIIa EC waters of IIIb</td>
<td>109</td>
<td>95</td>
<td>-13</td>
<td>100</td>
<td>-8.3</td>
<td>7%</td>
</tr>
<tr>
<td>Ling EC waters of IV</td>
<td>3,173</td>
<td>2,776</td>
<td>-13</td>
<td>2,856</td>
<td>-10.0</td>
<td>77%</td>
</tr>
<tr>
<td>Ling EC &amp; international waters of V</td>
<td>38</td>
<td>34</td>
<td>-11</td>
<td>34</td>
<td>-10.5</td>
<td>19%</td>
</tr>
<tr>
<td>Ling EC &amp; international waters of VI, VII, VIII, IX, X, XII, XIV</td>
<td>11,973</td>
<td>10,476</td>
<td>-13</td>
<td>10,776</td>
<td>-10.0</td>
<td>34%</td>
</tr>
<tr>
<td>Ling Norwegian waters of IV</td>
<td>1,000</td>
<td>No value</td>
<td></td>
<td>850</td>
<td>-15.0</td>
<td>8%</td>
</tr>
<tr>
<td>Norway Lobster (Nephrops) EC waters of IIA, IV</td>
<td>26,144</td>
<td>26,144</td>
<td>0</td>
<td>26,144</td>
<td>0.0</td>
<td>87%</td>
</tr>
<tr>
<td>Norway Lobster (Nephrops) VI; EC waters of Vb</td>
<td>19,885</td>
<td>19,885</td>
<td>0</td>
<td>19,885</td>
<td>0.0</td>
<td>98%</td>
</tr>
<tr>
<td>Norway Lobster (Nephrops) VII</td>
<td>25,153</td>
<td>25,153</td>
<td>0</td>
<td>25,153</td>
<td>0.0</td>
<td>33%</td>
</tr>
<tr>
<td>Northern prawn IIIa, IV</td>
<td>3,984</td>
<td>No value</td>
<td></td>
<td>3,984</td>
<td>0.0</td>
<td>22%</td>
</tr>
<tr>
<td>Plaice IV; EC waters of IIA</td>
<td>50,261</td>
<td>49,000</td>
<td>-3</td>
<td>49,000</td>
<td>-2.5</td>
<td>28%</td>
</tr>
<tr>
<td>Plaice VI; EC waters of Vb; international waters of XII &amp; XIV</td>
<td>786</td>
<td>688</td>
<td>-12</td>
<td>786</td>
<td>0.0</td>
<td>61%</td>
</tr>
<tr>
<td>Pollack VII</td>
<td>1,849</td>
<td>1,740</td>
<td>-6</td>
<td>1,849</td>
<td>0.0</td>
<td>51%</td>
</tr>
<tr>
<td>Pollack VIII</td>
<td>5,050</td>
<td>4,577</td>
<td>-9</td>
<td>5,050</td>
<td>0.0</td>
<td>29%</td>
</tr>
<tr>
<td>Pollack VIIIe</td>
<td>147</td>
<td>491</td>
<td>18</td>
<td>491</td>
<td>234.0</td>
<td>23%</td>
</tr>
<tr>
<td>Pollack VIIIg</td>
<td>337</td>
<td>286</td>
<td>-15</td>
<td>303</td>
<td>-10.1</td>
<td>13%</td>
</tr>
<tr>
<td>Pollack VIIhj</td>
<td>450</td>
<td>383</td>
<td>-15</td>
<td>450</td>
<td>0.0</td>
<td>37%</td>
</tr>
<tr>
<td>Pollack VIII</td>
<td>15,300</td>
<td>15,300</td>
<td>0</td>
<td>15,300</td>
<td>0.0</td>
<td>17%</td>
</tr>
<tr>
<td>Saithe IIIa &amp; IV; EC waters of IIB, IIId</td>
<td>123,250</td>
<td>135,900</td>
<td>10</td>
<td>135,900</td>
<td>10.3</td>
<td>17%</td>
</tr>
<tr>
<td>Saithe VI; EC waters of Vb; EC &amp; international waters of XII &amp; XIV</td>
<td>12,787</td>
<td>14,100</td>
<td>10</td>
<td>14,100</td>
<td>10.3</td>
<td>18%</td>
</tr>
<tr>
<td>Saithe VII, VIII, IX, X, Cecaf 34.1.1</td>
<td>3,790</td>
<td>3,790</td>
<td>0</td>
<td>3,790</td>
<td>0.0</td>
<td>15%</td>
</tr>
<tr>
<td>Turbot &amp; brill EC waters of IIA &amp; IV</td>
<td>4,323</td>
<td>3,891</td>
<td>-10</td>
<td>5,263</td>
<td>21.7</td>
<td>15%</td>
</tr>
<tr>
<td>Skate &amp; rays EC waters of IIA and IV</td>
<td>2,190</td>
<td>1,643</td>
<td>-25</td>
<td>1,643</td>
<td>-25.0</td>
<td>65%</td>
</tr>
<tr>
<td>Greenland Halibut EC waters of IIA and IV; EC &amp; international waters of VI</td>
<td>847</td>
<td>No value</td>
<td></td>
<td>847</td>
<td>0.0</td>
<td>63%</td>
</tr>
<tr>
<td>Mackerel IIIa &amp; IV; EC waters of IIB, IIId</td>
<td>456,000</td>
<td>-9</td>
<td></td>
<td>-2.5</td>
<td>8.8</td>
<td>4%</td>
</tr>
<tr>
<td>Mackerel VI, VII, VIIIabde, EC waters of Vb</td>
<td>422,551</td>
<td>No value</td>
<td></td>
<td>385,366</td>
<td>58%</td>
<td></td>
</tr>
<tr>
<td>Mackerel special conditions IIIa and IV</td>
<td>76,909</td>
<td>No value</td>
<td></td>
<td>70,225</td>
<td>-8.7</td>
<td>59%</td>
</tr>
<tr>
<td>Common sole EC waters of II &amp; IV</td>
<td>15,020</td>
<td>12,800</td>
<td>-15</td>
<td>12,800</td>
<td>-14.8</td>
<td>4%</td>
</tr>
<tr>
<td>Common sole VI; EC waters of Vb; international waters of XII &amp; XIV</td>
<td>68</td>
<td>58</td>
<td>-15</td>
<td>68</td>
<td>0.0</td>
<td>21%</td>
</tr>
<tr>
<td>Common sole VIIa</td>
<td>816</td>
<td>612</td>
<td>-25</td>
<td>669</td>
<td>-18.0</td>
<td>22%</td>
</tr>
<tr>
<td>Common sole VIIb</td>
<td>6,220</td>
<td>6,070</td>
<td>-2</td>
<td>6,593</td>
<td>6.0</td>
<td>19%</td>
</tr>
<tr>
<td>Common sole VIIe</td>
<td>900</td>
<td>765</td>
<td>-15</td>
<td>765</td>
<td>-15.0</td>
<td>59%</td>
</tr>
<tr>
<td>Common sole VIIf</td>
<td>893</td>
<td>920</td>
<td>3</td>
<td>964</td>
<td>8.0</td>
<td>28%</td>
</tr>
<tr>
<td>Common sole VIIhj</td>
<td>650</td>
<td>553</td>
<td>-15</td>
<td>650</td>
<td>0.0</td>
<td>17%</td>
</tr>
<tr>
<td>Sprat EC waters of IIA and IV</td>
<td>175,000</td>
<td>195,000</td>
<td>11</td>
<td>195,000</td>
<td>11.4</td>
<td>4%</td>
</tr>
<tr>
<td>Sprat VIIe</td>
<td>6,144</td>
<td>5,222</td>
<td>-15</td>
<td>6,144</td>
<td>0.0</td>
<td>53%</td>
</tr>
<tr>
<td>Spurdog EC waters of IIA &amp; IV</td>
<td>841</td>
<td>631</td>
<td>-25</td>
<td>631</td>
<td>-25.0</td>
<td>81%</td>
</tr>
<tr>
<td>Spurdog IIIa; EC and international waters of I V</td>
<td>2,121</td>
<td>2,004</td>
<td>-25</td>
<td>2,004</td>
<td>0.0</td>
<td></td>
</tr>
<tr>
<td>Horse mackerel EC waters of IIA &amp; IV</td>
<td>42,727</td>
<td>42,567</td>
<td>0</td>
<td>39,309</td>
<td>-8.0</td>
<td>10%</td>
</tr>
<tr>
<td>Horse mackerel VI, VII, VIIabde; EC waters of Vb; international waters of XII &amp; XIV</td>
<td>137,000</td>
<td>136,448</td>
<td>0</td>
<td>170,000</td>
<td>24.1</td>
<td>10%</td>
</tr>
<tr>
<td>Norway pout Norwegian waters of IV</td>
<td>5,000</td>
<td>No value</td>
<td></td>
<td>5,000</td>
<td>0.0</td>
<td>5%</td>
</tr>
<tr>
<td>Other species Norwegian waters of IV</td>
<td>7,000</td>
<td>7,000</td>
<td>0</td>
<td>5,000</td>
<td>-28.6</td>
<td>38%</td>
</tr>
</tbody>
</table>

**Environment and Agriculture (Sub-Committee D)**

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COMMON ORGANISATION OF AGRICULTURAL MARKETS (5918/08)

Letter from the Chairman to Lord Rooker, Minister of State for Sustainable Farming and Food, and Animal Welfare, 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 5 March 2008.

We consider that the continuation of production-linked aid is undesirable and that it does not fit well with ongoing reform of the CAP. We do recognise the procedural rationale for the roll-over proposed by the Commission, but note that the EU-wide cost of the extension (over £15 million) is not insignificant.

We are not clear on how the UK intends to vote in Council and would appreciate clarification on this and on the rationale for the chosen position.

In the meantime, we shall hold the proposal under scrutiny.

7 March 2008

Letter from Lord Rooker to the Chairman

Thank you for your most recent letter about the above Proposal.

Like you, I believe this measure runs counter to the progress that has been made on the reform of other sectors. When the Commission proposals were presented to the Special Committee on Agriculture on 11 February we made clear our regret that instead of coming forward with proposals for substantive reform of the sector, the Commission were proposing to prolong a production-linked aid with associated costs to the Community.

Nevertheless we appreciate the procedural and timing difficulty in which the Commission finds itself and understand the reasons why they are proposing to roll the regime forward for one more year in order to sweep up its reform along with the other sectors under consideration in the CAP Healthcheck.

For this reason, and having made clear our position of principle, we intend to support the proposal.

10 March 2008

Letter from the Chairman to Lord Rooker

Your letter of 10 March regarding the above Proposal was considered by the Chairman of Sub-Committee D on 12 March.

Sub-Committee D will not be able to consider your letter until its meeting on 19 March, by which time the Proposal will have been considered in Council.

We therefore wish to use provision 3(b) of the Scrutiny Reserve Resolution to indicate that you need not withhold agreement pending completion of scrutiny by this Committee.

12 March 2008

Letter from the Chairman to Lord Rooker

Your letter of 10 March regarding the above Proposal was considered by Sub-Committee D at its meeting on 19 March.

We have already invoked provision 3(b) of the Scrutiny Reserve Resolution with respect to this Proposal, and understand that it has now been adopted in Council. We are therefore content to lift scrutiny, while underscoring that we, like you, disapprove in principle of coupled support regimes, for the reasons outlined in our recent report on the future of the Common Agricultural Policy (HL 54). We hope that procedural reasons will not be used to justify further roll-overs of coupled support regimes, which are not only undesirable in themselves but also put the scrutiny process under pressure.

20 March 2008
COMMON ORGANISATION OF THE MARKET IN WINE (11361/07)

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

Thank you for your letter of 10 October.

Since its publication in July, the Commission proposal for reform of the EU wine sector has been discussed extensively in the Working Group, the Special Committee on Agriculture and the Agriculture Council itself. The negotiations have now reached the point where there is a clear end in sight and the expectation is that the Portuguese Presidency will achieve its aim of political adoption of the dossier in December. In advance of that I am writing to update your Committee on progress in these negotiations.

The main aim of the reform is to achieve a competitive EU wine sector that is sustainable in the long term. In this regard there is an acceptance that the current market intervention measures that are supporting uncompetitive production should be abolished so that the sector has a much clearer market focus. There has been a lot of discussion over the content and funding of the National Envelopes and the size and design of the grubbing-up scheme. In terms of the grubbing-up scheme, there is now general agreement that the Commission's proposal should be amended in favour of a shorter scheme (lasting three years), so that the adaptations can be made more quickly. The position on National Envelopes is emerging more slowly and ultimately will be one of the issues that will be decided at the December Council. But it is likely that some optionality will be introduced over the funding of export promotion measures and it is possible that Member States may be able to use National Envelope funding to create new entitlements under the Single Payments Scheme. The Government would support both of these changes.

As expected, the Commission’s proposal to ban the use of sugar for the enrichment of wine (chapitalisation) has been the most contentious issue in the negotiation. A clear difference of view remains between the Mediterranean Member States who strongly support the proposal and the northern and central Member States where sugar is traditionally used to enrich wines and where the Commission’s proposal (if maintained) would represent an additional cost for wine producers. The UK has argued strongly that a ban on the use of sugar runs counter to the objectives of the reform to increase the competitiveness of EU wine production, particularly when wine imported into the EU can be enriched using sugar. As with the National Envelopes, the issue of sugar enrichment is likely to be decided at the December Council, but the indications that we have been given is that sugar will continue to be allowed to be used for enrichment at least in the medium term.

The other major issue touched upon by your Committee was the question of planting rights, which continues to be the key domestic objective for the UK. I am pleased to report that we have received support from a significant number of other Member States and the Commission has signalled that it is prepared to consider a substantial increase in the level of the threshold under which planting rights do not apply.

I hope that your Committee finds this update helpful and is reassured that good progress has been made on the key points of concern to the English and Welsh wine production sector.

Finally, I can confirm that the Government’s response to the House of Lords report “European Wine: A Better Deal For All” will be with you shortly.

6 December 2007

Letter from the Chairman to Lord Rooker

Thank you for your letter dated 6 December on the above dossier and for the Government’s response to the Committee’s Report on the Proposal, prepared by Sub-Committee D.

As you will be aware, a debate on the Committee’s Report regarding this matter was scheduled to take place in the House of Lords on 12 December 2007. The debate has, however, had to be postponed.

Due to the fact that the debate is still to take place, we are not in a position to release the document from scrutiny but we do feel that, if the opportunity arises at the 17 December Council meeting to join an agreement along the lines described in your letter of 6 December, you should take it.

We would not regard your agreement to the revised Directive in those circumstances as a breach of the House of Lords Scrutiny Reserve Resolution of 6 December 1999. Under the terms of section 3(b) of that Resolution, we indicate that such agreement need not be withheld.

14 December 2007

Letter from Lord Rooker to the Chairman

Thank you for your letter of 14 December in response to mine of 6 December about the Commission’s proposal for reform of the EU wine regime.

As you have no doubt seen, the Agriculture Council did reach Political Agreement on a compromise proposal on 19 December 2007, which I am pleased to say satisfies our main priorities in respect of the UK wine production sector. In particular, we secured an important amendment to the proposal which provides that planting restrictions will not be introduced in the future in Member States (like the UK) where a planting rights regime did not apply by 31 December 2007. In addition, in the face of strong opposition from a large number of Member States, the Commission withdrew its proposal to ban the use of sugar for enrichment and modified its proposal to reduce the maximum level of enrichment with either sugar or grape must.

The impact of these changes means that the UK wine production sector will be able to continue to grow without the threat of a planting ban having to be introduced. In addition, our wine makers will continue to have the flexibility to enrich their wine to a sufficient level to make a marketable product, and have the option of using sugar to do this. I am pleased to report that the UK wine industry has warmly welcomed the agreement reached.

As expected, the main focus of the final negotiation was on the size and content of the National Envelopes and the end date for planting rights. On the former, the funding of the National Envelopes has been increased, mainly by reducing the amount of funding originally earmarked for Rural Development, and the list of eligible measures extended. It will now be possible for Member States to fund investments in wine processing facilities and to disburse National Envelope funds by means of a decoupled Single Farm Payment. On a transitional basis, Member States will also have the possibility of supporting programmes aimed at removing surplus production at a national level, in order to allow their wine production sectors to adapt to the new market situation post reform. On planting rights, the end date for the scheme has been extended until 2015, although Member States will also have the possibility of continuing to run a national scheme until 2018.

As you will know from our earlier correspondence, the UK strongly supported the Commission’s original proposal to immediately abolish market management instruments, such as distillation, and opposed the extension of planting rights until 2013. We were therefore only able to agree to the above changes in the context of an otherwise acceptable package of reforms. In particular, that the reform package did not result in an increase in the recent level of expenditure on wine, the inclusion of market support measures in the National Envelope was transitional and that we secured a satisfactory outcome on planting rights for the UK production sector.

In overall terms, the Government is satisfied with the outcome of the negotiation and voted in favour of the compromise proposal. We are convinced that the result will provide for greater market focus as restrictions on plantings and market support measures are phased out, whilst consumers will benefit from clearer, simpler labelling of EU wines. The outcome is very good news for the UK production sector, which will continue to be able to grow without the threat of planting restrictions and our producers will continue to be able to use sugar to enrich their wines. We expect that the proposal will be adopted in March once the Commission has incorporated the elements of the compromise agreement into the legal text.

9 January 2008

CONTROL OF ILLEGAL, UNREPORTED AND UNREGULATED FISHING (14236/07, 14237/07)

Letter from the Chairman to Jonathan Shaw MP, Minister for Marine, Landscape and Rural Affairs and Minister for the South East, Department for Environment, Food and Rural Affairs

Your EM (Explanatory Memorandum) on the above documents was considered by Sub-Committee D at its meeting of 21 November 2007.

We agree that Illegal, Unreported and Unregulated (IUU) fishing has undesirable economic and environmental consequences, and therefore support in principle the action outlined with the aim of preventing the import of IUU products into the Community. We do feel, however, that Community action on discards should be prioritised over the issue of importing IUU fisheries products.

We note that you are planning studies to explore any potential regulatory burdens and additional costs for enforcement bodies and for the fishing and fish processing industry arising from the planned work on IUU fishing. This is a plan that we welcome and we look forward to receiving the outcome of your work in this regard. We would also be interested to hear how developing countries have received the Proposal and what steps might be taken to help them comply with Community requirements and avoid barriers to trade.
Of particular concern to us in the Proposal is Chapter IX. In your EM, you note that the Government will need to consider the viability of the proposals for harmonised sanctions in the light of recent developments in the case law of the European Court of Justice. We would agree that this is indeed necessary. Moreover, at the beginning of the same Chapter, we also observe that Article 40(b) implies extra-territorial jurisdiction, in conjunction with Articles 38 and 39. We would consequently appreciate clarification as soon as possible of the Government’s position on Articles 38, 39, 40(b) and 43–46.

We shall maintain the Proposal and Communication under scrutiny.

21 November 2007

Letter from Jonathan Shaw MP to the Chairman

I am writing to update you on progress following your letter of 21 November giving the view of Sub-Committee D on the proposed Regulation on Illegal, Unreported and Unregulated (IUU) fishing. This follows the recent completion of the first read through of the proposal and the submission by Member States of written comments.

There is widespread support among Member States for an initiative on IUU fishing by the Community, including for some of the key principles guiding the European Commission’s thinking. However, like the UK, a significant number of Member States have concerns that the current draft of the Regulation entails unnecessary and counter-productive burdens on industry, enforcement authorities and developing countries, and could undermine national competence on legal issues.

The Committee raised in particular Chapters VIII (nationals) and XI (enforcement measures) of the proposal. Though we support the idea of a harmonised approach (in terms of the deterrent effect) to administrative sanctions, we are considering whether the current text is consistent with the independence and scope of the UK’s judicial and penal processes: other Member States have made the same point in relation to their own arrangements. It may be preferable that Article 43 (1) refers alone to the need for ‘a serious infringement to be punishable by effective, proportionate and dissuasive sanctions’ and that Article 43 (2) be removed.

In relation to nationals, we have argued that Articles 38 and 39 are too widely drawn and that they need to be targeted on those intentionally and significantly involved in IUU activity. We have emphasised that the institution of an appropriate legal process under existing Community fisheries instruments should not be added to under the IUU Regulation. In this context, you should be aware that taking action outside the European Union’s fisheries zone in relation to fishing vessels under our Flag and in relation to our nationals is established under the present CFP Control Regulation. We do not want Article 40 of the IUU proposal to extend a Member State’s jurisdiction.

On burdens, we have discussed widely with enforcement authorities, the industry and environmental and development NGOs. They share our concerns that the draft Regulation is impracticable in terms of the paperwork required and the need for it to be verified by competent authorities each time a fish product is imported or exported. The burdens and costs would be substantial and could act as a barrier to legitimate trade.

We have proposed instead a targeted, risk based approach making full use of robust commercial chain of custody schemes and existing sanitary and health inspection regimes. The harnessing of market based approaches in this way is key and would enable the industry to build up strong relationship with countries which source fish as well as the eventual consumer. We have been joined in this approach by a number of other key Member States.

In relation to developing countries, we are working closely with DFID. We have pressed the Commission on the need for additional capacity building for certain countries, including the least developed. The Department for International Development is sponsoring a meeting on IUU fishing involving key African fisheries Ministers, held under the auspices of the secretariat of the Southern African Development Commission in Namibia in May, which I am proposing to attend. We would aim to discuss the needs of the various countries in taking forward the Regulation. We will also be holding discussions in April on the proposed Regulation with the Chinese Fisheries Bureau of the Ministry of Agriculture.

I shall write again when the European Commission have given their reaction to the views of Member States and we are clearer as to how the issues might be resolved.

18 March 2008
Letter from the Chairman to Jonathan Shaw MP

Your letter (18 March) on the above documents was considered by Sub-Committee D at its meeting of 2 April 2008.

We note that negotiations on this Proposal are still at an early stage, and that substantial progress will be required before an agreement can be reached. We continue to regard IUU fishing as undesirable, and therefore support action in principle.

However, we share your concerns with respect to the administrative burden that the proposed Regulation might impose—particularly in light of existing problems with reporting requirements linked to the CFP—and strongly support your intention to press for the adoption of a more targeted, risk-based approach. We would be interested to hear whether any consideration has been given to a market-led approach based on certification instead—we have in mind a scheme similar to that operated by the Marine Stewardship Council in the UK.

In relation to nationals, we note that you consider Articles 38 and 39 of the draft Regulation too widely drawn. Other Member States wish to see EU nationals excluded from the scope of the Regulation altogether—what view would you take of an amendment along these lines?

With respect to the timing of this proposal, we note that the Commission is preparing a new Control Regulation whose subject-matter may to some extent overlap with this draft Regulation. We therefore wonder whether, in the interests of simplification and better regulation, it might be better for the two proposals to be considered in parallel, with a view to developing a coherent overall approach. We invite you to comment on this issue.

We look forward to hearing from you once the European Commission has reacted to the views expressed by Member States, and are particularly interested in its response to your views on capacity-building, which we support.

In the meantime, we will continue to hold the Proposal and the Communication under scrutiny.

2 April 2008

ELECTRONIC IDENTIFICATION FOR SHEEP AND GOATS (15314/07, 15510/07)

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

I am writing to give you details of the above proposal, which is scheduled for adoption as a false B point at the Agriculture and Fisheries Council on Monday 17 December. The proposal recommends the introduction of obligatory electronic identification of sheep and goats from 31 December 2009.

Council Regulation (EC) No 21/2004, which was adopted on 17 December 2003, established a system for the identification and registration of ovine and caprine animals. Amongst other measures it provided for the introduction of electronic identification (EID) for sheep and goats from 1 January 2008. This date was subject to confirmation or amendment by the Council following a report from the Commission to the Council which was to have been submitted by 30 June 2006, but which in practice was submitted on 15 November. In practice goats in the UK can be exempted from EID.

The Commission’s proposal and supporting report as discussed in EM 15314/07 sought to delay the introduction of EID until a date some time after 1 January 2008. The report recommends wider stakeholder discussion, in particular about the economic impact of individual traceability and EID, and foresees the obligatory EID date being adopted during 2008, with a view to implementing EID by the end of 2009. The proposals would have provided for the obligatory date to be agreed by the Commission’s Standing Committee on the Food Chain and Animal Health (Scofcah) instead of by the Council. This method of adoption would have suited us because we would have been able to discuss further the issues of cost and technology. We would also have been able to link the date for the introduction of EID and the need to reduce the record keeping burden imposed by the Regulation in respect of older animals, that are not identified electronically.

The Commission’s proposal was discussed at attachés on Friday 30 November. Unfortunately, it only received support from the UK. The Council Legal Service advised at that meeting that it was necessary to fix a date for the introduction of EID by 31 December to avoid the existing date of 1 January 2008 coming automatically into force. Member States agreed a qualified majority could be secured around an introduction date of 1 January 2010. As a result the Presidency issued a compromise proposal which provides for the obligatory introduction of EID on 1 January 2010 which was accepted by a qualified majority at COREPER on 7 December.
Whilst we would prefer to see no date fixed until our outstanding issues regarding cost and technology are discussed further, if we were to vote against the compromise we risk creating a blocking minority, which would bring the introduction of EID on 1 January 2008. Agreeing the date of 31 December 2009 represents a significant improvement over the current Regulation in that it gives our industry two years longer than was originally agreed to adjust to the introduction of EID.

I attach great importance to the work of the Committee, and I very much regret that this proposal is being pushed through Council so quickly and without prior scrutiny clearance. This is not a step we take lightly but I hope the Committee understands that in order to secure the best deal for the sheep and goat industry we have to support the compromise proposal. If we were to vote against or abstain, there is a high risk that EID would become mandatory with effect from 1 January 2008, and we simply cannot take this risk. I hope that the Committee understands the exceptional reasons leading to us taking this course on this occasion and hope the Committee will accept my apologies for any appearance of discourtesy.

13 December 2007

Letter from the Chairman to Lord Rooker

Your letter of 13 December 2007, your Explanatory Memorandum on the above dossiers and your SEM on the legislative proposal were considered by Sub-Committee D at its meeting of 19 December 2007.

Further to your letter of 13 December, we now note that a decision was indeed taken at the Agriculture and Fisheries Council of 17-19 December. We very much regret that a decision on a final date for implementation has been taken even though the European Commission has indicated that the setting of such a date cannot yet be justified. We regret that the Council should have found itself in this position, which appears to run counter to the principles of better regulation that should underpin the formation of EU-level policy, and we would be grateful if you were able to make this point at the Council level.

Nevertheless, we note too the implications of failing to agree on a revised date before the end of 2007 and we do understand the circumstances under which you gave agreement without prior scrutiny clearance. We will now release the proposal and the Report from scrutiny.

19 December 2007

ENVIRONMENTAL STATISTICS: TOWARDS A SHARED ENVIRONMENTAL INFORMATION SYSTEM (6222/08)

Letter from the Chairman to Phil Woolas MP, Minister for the Environment, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum on the above proposal was considered by Sub-Committee D at its meeting of 26 March 2008.

We support the Commission’s desire to streamline environmental reporting requirements, and consider that decentralising the way such data is stored, and facilitating access to it, are both desirable outcomes.

Like you, however, we believe that such goals should be pursued in a proportionate and cost-effective way. We would not wish to see new reporting obligations introduced in the proposed new Reporting Directive, but would instead welcome an emphasis on prioritisation and simplification. We are also concerned that no commitments to infrastructure investments should be entered into until the appropriate cost/benefit analyses have been carried out and analysed.

We broadly support your approach to the development of these proposals, and will therefore await the publication of a detailed implementation plan and a draft Reporting Directive before examining this dossier in further detail. In the meantime we are content to clear this Communication from scrutiny.

26 March 2008

EU EMISSIONS TRADING SCHEME (5862/08)

Letter from the Chairman to Phil Woolas MP, Minister for the Environment, 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 19 March 2008.

We consider that the proposed Emissions Trading Scheme (ETS) in its amended form is an improvement, taking on board lessons learned during the first phase of the scheme.
We note in particular, however, that the opportunity has not been taken to include, or give consideration to the inclusion of, agriculture within the ETS. In the course of our recent inquiry into the Future of the CAP, we heard that agriculture is responsible for 9% of greenhouse gas emissions in the EU and we therefore recommended that urgent consideration be given to integrating agriculture into the ETS (para 75, HL 54, Session 2007–8). We would urge you to raise this issue with the Commission in the context of this review of the ETS. We would in principle also support the inclusion of the transport and shipping sectors in the ETS.

We note your concerns about the proposed restrictions on Member States’ freedom to auction and on how proceeds from auctioning can be spent. We recognize that auctioning could have serious implications for carbon leakage, but equally, that exempting sectors at risk of carbon leakage from paying for their allowances could seriously undermine the objectives of the ETS, and send the wrong signal internationally. We would therefore appreciate clarification from you on the policy options available to address these concerns.

We look forward to receiving your impact assessment and your responses to the points raised above. In that light, we shall hold the proposal under scrutiny. We intend to examine this proposal in a short inquiry beginning in June this year.

20 March 2008

Letter from Phil Woolas MP to the Chairman

Thank you for your response to our EM 5862/08 on the EU Commission’s proposal to amend the EU Emissions Trading Scheme under Directive 2003/87/EC.

You raised two queries relating to agriculture and carbon leakage. I will address each in turn.

The Commission has not proposed the inclusion of the agriculture sector in the EU ETS at this stage, as they do not believe that emissions from this sector can be monitored, reported and verified to the level of accuracy required under the EU ETS. We recognise that the characteristics of the agriculture sector makes emissions trading more challenging for this sector than for others, and are therefore of the view that it will not be possible to include agriculture as part of this year’s negotiations on the EU ETS.

The Government is however committed to exploring the potential scope and feasibility of a market mechanism to enable the trading of greenhouse gas reductions from agriculture, forestry and land management. We have recently published the conclusions of a study which we commissioned to look at two possible models for such a mechanism: a cap-and-trade and a project-based scheme. The study included an initial cost/benefit analysis of each. We are considering the conclusions of this work, and will carry out further analysis to build a clearer picture of possible options for achieving cost-effective emissions reductions in the sector.

We would therefore not rule out the inclusion of agriculture in the EU ETS or another trading mechanism in future, if the current practical concerns can be overcome.

Turning to the issue of carbon leakage, we agree with the Commission that decisions on the risk of carbon leakage need to be evidence-based and that the specific nature and extent of the problem needs to be defined before appropriate policy options can be determined. Last year the Government commissioned research into this issue from the Climate Strategies consortium and Oxford Economics. These reports have now been published as has a summary by the Carbon Trust of the Climate Strategies report. These outputs will feed into Government’s partial impact assessment that will accompany the public consultation on the EU ETS that we will publish before negotiations are well advanced on the Climate and Energy package. That consultation document will also discuss the policy options for those sectors affected and I will ensure that you are sent a copy of both the consultation paper and partial impact assessment under cover of a Supplementary Explanatory Memorandum.

Finally, I welcome your proposed enquiry into the EU ETS in June which will assist us in shaping the UK reaction to the Commission’s proposal and will be an important addition to our formal consultation process.

3 April 2008

6 http://statistics.defra.gov.uk/esg/reports/ghgemissions/default.asp
9 http://www.carbontrust.co.uk/Publications/publicationdetail.htm?productid=CTC728
FARM STRUCTURE SURVEYS AND SURVEY ON AGRICULTURAL PRODUCTION METHODS
(9531/07)

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

Your letter of 4 September 2007 and your Supplementary Explanatory Memorandum on the above Proposal were considered by Sub-Committee D at its meeting of 28 November 2007.

We welcome the comments that you made in your letter of 4 September, which helped to clarify some of the issues that concerned us.

We emphasised in July our view that the changes proposed were substantial, and potentially burdensome. We note that a lot of progress has been made since the original proposal was tabled, but we do remain concerned about the range of information required in the agricultural production methods survey. We would appreciate clearer justification that all of the pieces of information are necessary and that their collection will serve an identifiable purpose. We note also that the Government is still negotiating on labour data collection requirements and we support the Government in that approach.

In the light of our ongoing concerns, we shall retain the proposal under scrutiny.

28 November 2007

Letter from Lord Rooker to the Chairman

Thank you for your letter of 28 November 2007 and the consideration of the Supplementary Explanatory Memorandum on the above proposal by Sub-Committee D (Environment and Agriculture). You noted the progress that had been made on reducing the administrative burden associated with the proposal. It was helpful to have your confirmation on negotiating further on the labour requirements. You remained concerned about the range of information required in the agricultural production methods survey. You requested a clear justification of why all of the pieces of information are necessary and confirmation that their collection will serve an identifiable purpose.

I am extremely keen to minimise the burden of statistical surveys on farmers and I am pleased to see the progress that is being made on this particular proposal. The results of the agricultural production methods survey are important in that they will be used to assess the environmental impact of farming. The questions touch on major areas of UK and EU policy which are summarised below.

AIR POLLUTION

Ammonia is an air pollutant largely produced by livestock farming that can damage sensitive habitats and human health. Agriculture accounts for 90 per cent of UK ammonia emissions and 7 per cent of the country’s greenhouse gas emissions (though 57 per cent of methane and 66 per cent of nitrous oxide emissions are from agriculture). The survey results on nutrient management, animal grazing and housing, and on the storage and use of manures will help refine our estimates of emissions and provide more robust EU-wide data.

WATER QUALITY AND RESOURCES

The EU Water Framework Directive requires all Member States to aim to achieve “good ecological and chemical status” in all waterbodies (surface and groundwater) by 2015. Agriculture is a major source of diffuse water pollution and again the results on animal grazing and the treatment of manures will allow better estimates of the potential impacts of farming on water quality. This will allow Member States to meet EU reporting requirements such as NVZ assessments.

LAND MANAGEMENT

The effective management of soils is important to sustain production while minimising impacts on water and air quality and on biodiversity. For these reasons, the EU have developed a Thematic Strategy for Soil Protection. The survey results will help quantify the levels of farming practices which impact on soil quality.

More details on the main uses of the outputs from the Survey of Agricultural Production Methods, split by question area, are included at Annex A.

Agri-environment will increasingly be the basis on which Common Agricultural Policy (CAP) payments are made. It is important that CAP reforms are based on accurate and consistent data across the EU. This increases the demand for new data, whilst still requiring much of the traditional production data.

We have made considerable efforts to encourage the Commission to improve the design of the survey, to simplify it (e.g. by the use of yes/no questions) and to better target the information that is collected. We believe that a detailed survey of a relatively small number of farmers is the most efficient way of collecting data of this sort. Our arguments, along with those presented by other Member States, have persuaded the Commission to relax the precision requirements on the survey which has reduced the sample size in the UK from around 120,000 holdings to 40,000 holdings. It is going to be difficult to negotiate a further reduction in sample size. We are content to live with a survey of this size on the basis that it will provide useful regional information, and that it will only be required in this volume in 2010.

We believe that the majority of questions asked in the survey will improve our understanding of farming practices and help inform the important policy areas identified above and at Annex A. There are a small number of areas where we believe the data is less useful (e.g. tillage methods) or where the questions are less applicable in the UK (e.g. irrigation). We are lobbying the Commission to improve the wording of these questions, or to make them optional for the UK.

Given the high policy interest in agri-environment data, Defra already undertakes a small survey of farm practices in England (covering around 6,000 holdings). This survey has been run annually since 2004 and we intend that the survey of agricultural production methods will replace it in 2010. We also already have monitoring schemes in place to measure the effect of some of these practices (e.g. Nitrate levels in water). The survey will complement the monitoring data by helping quantify the causes of some of the effects observed.

28 January 2008

ANNEX A

PROPOSED QUESTION AREAS FOR 2010 SURVEY OF AGRICULTURAL PRODUCTION METHODS AND THE MAIN USES OF THE RESULTS

<table>
<thead>
<tr>
<th>Area</th>
<th>Measures</th>
<th>Main use</th>
</tr>
</thead>
</table>
| Soil conservation, actions against erosion and nutrient leaching | Tillage methods  
Soil cover in Winter  
Crop rotation  
Anti-erosion measures for arable land and permanent crops: | The sustainable management of soils is a central pillar in sustainable development. This question measures some of the most important practices which contribute to good soil management.  
The type of tillage can affect the quantities of organic matter in the soil and the level of compaction. Early planting of Winter crops and the type of crop rotation are important in preventing soil erosion. Whilst important elsewhere in the EU, most of the anti-erosion measures listed will not be appropriate in the UK.  
This data will inform policy initiatives such as Defra’s Soil Action Plan for England and the EU Thematic Strategy for Soil Protection. |
| Landscape features | Establishment and maintenance of linear features | Linear features such as hedgerows play an important role on farms; helping to prevent soil erosion and water run-off, providing shelter, controlling livestock and protecting crops from the wind.  
The results of this question will help quantify the impact of various agri-environment schemes. In England some of this data has already been collected by Natural England. |
### Environment and Agriculture (Sub-committee D)

<table>
<thead>
<tr>
<th>Area</th>
<th>Measures</th>
<th>Main use</th>
</tr>
</thead>
<tbody>
<tr>
<td>Animal grazing and housing</td>
<td>Area and type of grazing</td>
<td>Agriculture is the main source of ammonia emissions. Large ammonia deposits can disrupt the delicate balance of plant communities, favouring the growth of a few common, fast-growing species at the expense of a greater range of plants, often of conservation value. Ammonia emissions, through acid rain, can also affect water quality. International agreements are in place to curb emissions of ammonia. The results of these questions will be used to refine the calculations of ammonia emissions which depend on estimates of the type of livestock and how they are grazed and housed, and for how long. The data will also be used to inform estimates of water pollution.</td>
</tr>
<tr>
<td></td>
<td>Type of housing by animal</td>
<td></td>
</tr>
<tr>
<td>Nutrients</td>
<td>Nutrient management</td>
<td>Matching applications of nutrients to crop requirements helps to reduce the risk of nutrient loss to the environment while increasing the net returns for farmers. The results of the questions in this section will be used to identify the extent to which farmers are following guidelines on best practice. In particular, it will be used to inform progress against the EC Nitrates Directive. The type and timing of incorporation of manure and slurry in to the land also features in calculations of ammonia emissions.</td>
</tr>
<tr>
<td></td>
<td>Manure application techniques</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Application of slurry</td>
<td></td>
</tr>
<tr>
<td>Manure storage and treatment facilities</td>
<td>Storage facilities</td>
<td>Though a useful source of fertiliser if applied at the correct time and in the correct volume, manure and slurry is a potential pollutant. This can affect both air quality (e.g. as a major source of ammonia emissions) and water quality (e.g. the dominant source of nitrates in many river catchments is from agricultural land). This data allows estimates to be made of the storage capacity on farms and the industry’s ability to, for example, comply with the EC Nitrates Directive and Defra’s Codes of Good Agricultural Practice.</td>
</tr>
<tr>
<td>Plant protection</td>
<td>Areas used and methods employed</td>
<td>Integrated Pest Management (often called Integrated Farm Management in the UK) involves combining traditional and modern farming practices with measures which protect the environment. These practices include targeting pesticides and fertilisers more effectively to reduce possible harmful side effects on the environment. It can also involve using techniques such as using naturally occurring insects to control pest species or choosing different tillage methods.</td>
</tr>
</tbody>
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<th>Environment and Agriculture (Sub-Committee D)</th>
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**Area Measures Main use**

The use of mechanical (e.g., using insect traps or using tillage to disrupt breeding), biological (e.g., promoting insects that eat pests) or chemical (the targeted use of pesticides) controls are the most important features of Integrated Pest Management.

<table>
<thead>
<tr>
<th>Irrigation Area irrigated Methods used Sources of water Main use</th>
</tr>
</thead>
<tbody>
<tr>
<td>These questions aim to quantify and classify the use of water for irrigation. These questions will generally have less relevance in the UK than in other (particularly the Southern) Member States. Very few crops are routinely irrigated in the UK and we will not be required to ask the full list provided.</td>
</tr>
<tr>
<td>The question on the types of irrigation method used will help inform the debate on the efficient use of water (with drop irrigation thought to be the most efficient method).</td>
</tr>
</tbody>
</table>

**Letter from the Chairman to Lord Rooker**

Thank you for your letter of 28 January 2008 on the above dossier, which was considered by Sub-Committee D at its meeting of 6 February.

We are pleased to note the progress that you have made in further reducing the burden of the surveys on farmers.

We remain concerned about the sample size for the collection of information but we accept your assertion that it is likely to be difficult to negotiate a further reduction in size.

Our outstanding concern, on which we would appreciate your view, relates to methods of inspection. We are particularly worried that they may be excessively intrusive and that they may vary significantly across different Member States. We would also appreciate if you could inform us of the outcome of your attempts to ensure that some of the survey questions are classed as optional for the UK.

In light of these concerns, we will continue to hold the proposal under scrutiny.

*7 February 2008*

**Letter from Lord Rooker to the Chairman**

Thank you for your letter of 7 February 2008 and the consideration of the Supplementary Explanatory Memorandum on the above proposal by Sub-Committee D. You noted the progress that had been made on reducing the administrative burden associated with the proposal but had an outstanding concern on methods of inspection.

The proposal provides for statistical surveys of agricultural holdings across the EU. In the UK these are conducted via a postal questionnaire. There are no associated formal inspections of the farms to validate the responses to the survey although there may be phone calls to clarify responses which seem to be unusual or incorrect, for example when compared to previous years or where totals do not add up. The data is not used for inspections or enforcement.

In collecting the data, it is made clear to farmers that the data is primarily used for statistical purposes in line with the European Statistical Code of Practice. Only under exceptional circumstances, and with Ministerial approval, can the information provided be shared with investigative bodies. In England, for example, Defra sets out the uses of the data in a ‘Fair Processing Notice’ which is supplied to farmers with their June Survey questionnaire (which provides the majority of information required for the Farm Structure Survey). The notice is attached.
You also asked me to inform you of the outcome of our attempts to ensure that some of the survey questions
are classed as optional for the UK. As a result of comments from ourselves and other Member States, the
proposal now contains a clause which allows Member States to exclude questions which are not appropriate.
This will allow us to avoid asking for information where the level of activity in the UK is low, for example on
citrus fruit, flax or hops. In earlier versions of the proposal the decision on whether this type of data was to
be collected rested with the Commission rather than Member States.

We are also continuing to lobby for reductions in the amount of information collected on labour activity on
the holding and recently submitted a compromise proposal. There is considerable pressure to progress the
proposal (some Member States will carry out the survey in 2009), and there is considerable doubt on whether
our compromise will be accepted.

25 February 2008

ANNEX

FAIR PROCESSING NOTICE

For the purposes of the Data Protection Act 1998, Defra is the data controller

The information you have supplied on this form may be used as specified in section 3 of the Agricultural
Statistics Act 1979 (as amended). See explanation below.

Defra may be required to release information, including personal data and commercial information, on
request under the Environmental Information Regulations 2004 or the Freedom of Information Act 2000. However, Defra will not permit unwarranted breach of confidentiality nor will we act in contravention of our
obligations under the Data Protection Act.

If you wish to obtain a copy of your personal data held by Defra, please follow the procedure at
www.defra.gov.uk/corporate/opengov/personaldata.htm. Defra’s public service guarantee on data handling,
which gives details of your rights in respect of the handling of your personal data is also available on this
website. If you don’t have access to the internet, please telephone the Defra helpline 08459 33 55 77 and ask
to speak to the Data Protection Officer.

If you believe that any of the information we hold concerning you is incorrect or out of date, please provide
us with the accurate information in writing together with supporting evidence (if appropriate). You should
address your correspondence to:

Department for Environment, Food and Rural Affairs Surveys Statistics and Food Economics Division,
Foss House, Kings Pool, 1-2 Peasholme Green, York YO1 7PX.

Defra Register Policy: 01904 455284 Defra Email: surveys@defra.gsi.gov.uk

APPLICATION TO AGRICULTURAL SURVEYS

Section 3 of the Agricultural Statistics Act 1979 is set out in full below. Management of the data conforms to
national statistics protocols.

We do not normally use the personal data you have provided for inspections under EU or national legislation
of livestock, crops, labour forces etc; the creation of new registers specifically for enforcement purposes; or
share the information with investigative bodies (e.g. Police, HM Revenue and Customs) for enforcement
purposes. Where, exceptionally, we do need to use the data for such purposes, we will contact you.

We use the data for:

— Creation of published statistical tables relating to agriculture and horticulture in England which do
  not contain figures relating to less than five agricultural holdings.

— Helping Defra and the Food Standards Agency to prepare for and respond to emergencies and to
  prevent the spread of disease or contamination following any emergency.

— Sharing with:

(i) fire brigades for emergency planning purposes.

(ii) other Government Departments and the Office of National Statistics for statistical purposes, e.g. to
  ensure that agricultural and horticultural businesses are included in business surveys.

(iii) Defra Divisions, Defra sponsored or supported bodies conducting statistical surveys, studies or
    research.
(iv) the Health and Safety Commission to assist in their planning, promotional work and farm visits and Injuries Reduction Programme.

(v) the food Standards Agency.

— Sending targeted mailshots of important Defra information to agricultural and horticultural holdings in which case lists of names and addresses are carefully controlled and not released outside the statistical team and approved mailing house for the specific mailing (lists must be destroyed by the mailing house immediately after the mailing).

— Share name, address and contact information, CPH/Business identifier and role (but not other detailed information) with other parts of the Defra family to update Defra customer registers for contacts with farmers. The Defra family includes the core Department and all related executive agencies, e.g. the Central Science Laboratory and the Rural Payments Agency, and non departmental public bodies such as Environment Agency and Natural England where they are carrying out functions on behalf of Defra.

— In future to permit access to statistical researchers under controlled conditions to information which has been shared with the Office for National Statistics (name, address, CPH, employment).

**Agricultural Statistics Act 1979 (as amended)**

“3 (1) Subject to subsection (2) below, no information relating to any particular land or business which has been obtained under Section 1 above shall be published or otherwise disclosed without the previous consent in writing of the person by whom the information was furnished and every other person who is occupier of the land and whose interests may in the opinion of the appropriate Minister be affected by the disclosure.

(2) Nothing in subsection (1) above shall restrict the disclosure of information—

(a) to the Minister in charge of any Government department, to any authority acting under an enactment for regulating the marketing of any agricultural produce, or to any person exercising functions on behalf of any such Minister or authority for the purpose of the exercise of those functions;

(b) to an authority having power under any enactment to give permission for the development of land, for the purpose of assisting that authority in the preparation of proposals relating to such development or in considering whether or not to give such permission;

(c) if the disclosure is confined to situation, extent, number and kind of livestock, character of land, and name and address of owner and occupier, to any person to whom the appropriate Minister considers that the disclosure is required in the public interest;

(d) to any person for the purpose of any criminal proceedings under section 4 below or for the purposes of any report of such proceedings;

(e) . . .

(f) to an institution of the European Communities under section 12 of the European Communities Act 1972;

(g) to the Food Standards Agency for purposes connected with the carrying out of any of its functions.”

**Letter from the Chairman to Lord Rooker**

Thank you for your letter of 25 February 2008 on the above dossier, which was considered by Sub-Committee D at its meeting of 5 March.

We are pleased to note that the statistical surveys in question are to be conducted through a postal questionnaire, and if additional clarification were necessary, by telephone.

We welcome too the news that you have successfully negotiated the possibility for individual Member States to exclude survey questions that are not deemed relevant in light of national circumstances.

We note that you are continuing to lobby for reductions in the amount of information collected about labour activity on the holding, and we support your efforts in that regard.

In light of the significant progress made, we are now content to release the proposal from scrutiny.

*8 March 2008*
FISHERIES PARTNERSHIP AGREEMENT BETWEEN THE EC AND THE ISLAMIC REPUBLIC OF MAURITANIA (16570/07)

Letter from the Chairman to Jonathan Shaw MP, Minister for Marine, Landscape and Rural Affairs and Minister for the South East, 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 30 January 2008.

We, like you, support the Commission’s initiative in seeking to terminate the Protocol in order to negotiate terms that are more in line with the available resources and the capacity of the fleets concerned. Naturally, we would wish that the termination be carried out in accordance with Community law and we therefore support your intention to vote against the proposal due to the legal obstacles that you highlighted in your EM.

You noted in your EM that the deadline of 31 January to denounce the Protocol will now be missed. Our understanding is that the Community therefore gives tacit agreement to a full two year continuation of the Protocol until the end of July 2010. Could you confirm if this is the case and, if so, what options the Community has at its disposal to re-negotiate the terms of the Agreement? We note that Commissioner Borg told the Fisheries Council on 21 January that a memorandum of understanding is being discussed with a view to reviewing the protocol and better adapting it to the needs of the Member States. Could you expand, please, on the information provided by the Commissioner.

In the light of the outstanding issues, we shall hold the Proposal under scrutiny.

30 January 2008

Letter from Jonathan Shaw MP to the Chairman

Thank you for your letter of 30 January 2008 in which you asked for further clarification on the above proposal. I am writing to update you on recent developments on this dossier.

As you are aware at the Council of Ministers meeting in December 2007, Commissioner Joe Borg presented a proposal to denounce the protocol of the Fisheries Partnership Agreement between the EU and Mauritania. This was due to the underutilisation of available fishing opportunities. He confirmed that this item would be on the agenda for the January 2008 Council for a decision.

At the January 2008 Council the Commission announced that a Memorandum of Understanding was being discussed with Mauritania to amend the current protocol for future years. The aim of which was to ensure that the financial contribution better reflects the uptake of fishing opportunities by Community vessels. Mauritania were agreeable to this which, in effect, meant that the Commission did not need to denounce the current protocol. This was agreed by all Ministers at the Council.

Since January 2008 Council, the Commission has been in discussions with Mauritania within the parameters set out in the Memorandum of Understanding. We understand these discussions have been finalised and the Commission will be presenting an amended Protocol to the External Fisheries Working Group in Brussels shortly.

The new Protocol is for a four year period, has reduced fishing opportunities and a subsequent reduction in the money paid for these opportunities. You should note that the total money given to Mauritania will remain at Euro 84 million with the reduction from fishing offset by increase in the contribution from development funds.

21 February 2008

Letter from the Chairman to Jonathan Shaw MP

Thank you for your letter of 21 February 2008 on the above proposal, which was discussed by Sub-Committee D at its meeting of 5 March 2008.

You note that the Commission has been in discussion with Mauritania, within the parameters set out in the Memorandum of Understanding, to amend the current Protocol for future years. As we understand the situation from your letter, the amended Protocol will reduce the available level of fishing opportunities in return for a reduction in the financial contribution paid by the Community, but that that reduction will be offset by an increase in the development funds Mauritania receives from the Community. The overall impact upon the Community budget would therefore be neutral.

We would be grateful if you could specify the source of the additional development funds you mention, and clarify what the justification for such additional development expenditure is held to be.
In our letter of 30 January 2008 we asked whether failure to meet the deadline for denouncing the Protocol essentially meant that the Community would give tacit agreement to a full two-year continuation of the Protocol until the end of July 2010. Could you please clarify if this is indeed the status quo should agreement on an amended Protocol not be forthcoming?

In the light of these continuing uncertainties, we shall continue to hold the Proposal under scrutiny.

7 March 2008

**Letter from Jonathan Shaw MP to the Chairman**

Thank you for your letter of 7 March 2008 in which you asked for further clarification on the above proposal. I am writing in response to your queries.

There have been recent developments in the negotiations in Nouakchott. After some last minute difficulties the new protocol was initialled by the Commission on 13 March. This still needs to be ratified by the Council so you will, in due course, be presented with a formal proposal from the Commission. The original proposal to terminate the agreement has, therefore, been withdrawn.

In answer to your specific question about the financial arrangements, we now understand that the Commission is not suggesting an increase in development funds. Rather they will link existing development funds to the partnership agreement, in particular support to the Mauritanian fishing sector.

The Commission also plans to annually reduce the Community’s financial contribution relating to the agreement. This will result in savings over the four year period in comparison to the previous agreement. The recently initialled protocol shows a phased introduction of a €16 million (£12.24 million) reduction per annum, which will mostly be offset by €9 million (6.88 million) per annum of development funds becoming directly linked to the agreement. There will, therefore, be a €7 million (£5.35 million) decrease in total contributions linked directly to the fisheries agreement per annum by the end of the agreement.

For your information some Member States were concerned about particular aspects of the agreement. The most important problem was connected with the Mauritanian insistence that a new biological rest period for cephalopods should be included. One Member State had serious difficulties with this proposal indicating that compensation (in the region of 10 million euros (£7.65 million) would be due to their industry.

The second main issue concerns a definition of Mauritanian law and whether it prohibits the use of a particular gear. The gear is legal within the Community. It is hoped this issue will be resolved via bilateral contacts later this year.

26 March 2008

**Letter from the Chairman to Jonathan Shaw MP**

Thank you for your letter of 26 March 2008 on the above proposal, which was discussed by Sub-Committee D at its meeting of 2 April 2008.

We note that the original Commission proposal to terminate the Fisheries Partnership Agreement with Mauritania has now been withdrawn, and that we will in due course receive a new proposal and EM for consideration.

We will therefore clear this proposal from scrutiny, and await the new proposal, in relation to which we may raise any outstanding issues.

2 April 2008

**GENETICALLY MODIFIED ORGANISMS: DELIBERATE RELEASE INTO THE ENVIRONMENT**

(5250/07)

**Letter from Phil Woolas MP, Minister for the Environment, 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 12–15 November. This is in advance of the Presidency seeking political agreement at Council.

Eight amendments were originally proposed by the EP Committee on the Environment, Public Health and Food Safety. The majority of these amendments were outwith the scope of Commission Decision 2006/512 which provides for the “regulatory procedure with scrutiny” to be applied to the non-essential elements of a basic instrument. In order to reach an agreement on this dossier at first reading a number of informal contacts
were made between the Council, the European Parliament and the Commission as a result of which nine compromise amendments were made. These amendments do only apply the new procedure to the non-essential elements. The Plenary therefore adopted the nine compromise amendments and none of the Committee’s original amendments.

The key amendments are:

— A requirement to apply the regulatory procedure with scrutiny to the setting of threshold levels for the technically unavoidable presence of authorised GMOs in products intended for direct processing. This amendment is consistent with requirement for the setting of labelling thresholds in the proposed Directive.

— A requirement to amend the Safeguard Article of Directive 2001/18/EC to make it clear that it only applies to the Member State notifying the safeguard action. This amendment does not require the regulatory committee with scrutiny procedures to be applied to safeguard actions as that would be out with the requirements of Commission Decision 2006/512/EC which relate to involving the European Parliament on amendments to the technical requirements of the Directive only.

— A requirement to apply the new procedures to the conditions for implementing the labelling of genetically modified organisms in contained use.

The amendments adopted correspond to what was agreed between the three institutions and ought therefore to be acceptable to the Council. As the amendments are of a technical nature which only concern the committee procedures, they do not need to be transposed by the Member States.

19 December 2007

GLOBAL CLIMATE CHANGE ALLIANCE (13107/07)

Letter from Gareth Thomas MP, Parliamentary Under Secretary of State for International Development, Department for International Development, to the Chairman

Your Sub-Committee considered the Commission Communication, “Building a Global Climate Change Alliance between the European Union and Poor Developing Countries most Vulnerable to Climate Change” (13107-07) on 24 October.

There have been some developments since my Explanatory Memorandum that go some way in answering our initial queries about the added value the GCCA will bring over and above other initiatives.

Commission documents we have received set out the ways in which the GCCA is coherent with other EU commitments. They argue that the GCCA provides a framework to operationalise the ACP-EU Joint Declaration on Climate Change and Development as well as the Bonn Political Declaration to provide $410 million per year by 2005. The Commission believes that the GCCA will show that the EU stands up to these commitments. The Commission also argues that the GCCA supports the EU Action Plan on Climate Change and Development, which is particularly focused on mainstreaming climate change into development. The recent review of the implementation of the Action Plan found that there was a lack of coordination between EU Member States and argued for dedicated resources. The GCCA is seen as providing a response to this.

The Commission has also set out how it sees the GCCA complementing existing international initiatives on climate change.

— Unlike the GEF Trust Fund, Least Developed Country Fund (LDCF), Special Climate Change Fund (SCCF) and Adaptation Fund (AF) the GCCA provides for political dialogue in addition to financial support.

— Unlike the GEF Trust Fund, SCCF and AF, the GCCA targets the most vulnerable and, unlike the LDCF, Small Island Developing States.

— In terms of the International Development Banks’ Clean Energy Investment Framework (CEIF), the Commission points out that the GCCA does not overlap with the energy access pillar (not included in the GCCA) or transition to low carbon economy (GCCA has complementary focus on LDCs and SIDS).

— On adaptation and forestry, the Commission recognises that there are similarities and says that the GCCA could explore a contribution to the Bank’s CEIF and Forest Carbon Partnership Facility, though this would need to be weighed up against the disadvantages in loss of visibility.
In terms of complementarity with bilateral initiatives, the Commission says that the GCCA will draw on the relevant findings of Sweden’s Commission on Climate Change and Development. It argues that the GCCA will allow for a more joined up response by EU Member States by providing them with a multilateral channel for their climate change funds, rather than each donor responding separately. In addition, since the GCCA is about dialogue and exchange of experience as much as about practical cooperation, the Commission argues that it will help ensure a joint EU political approach and coordinated parallel funding (as done for other areas, such as infrastructure or aid for trade).

The Commission organised a side event on the GCCA. The initiative was introduced by Stavros Dimas, Commissioner for Environment, and given full support by the Swedish Environment Minister Andreas Carlgren who pledged €5.5 million in support to the Alliance.

The Commission has yet to finalise implementation arrangements. We have worked with the Commission’s consultants, and the Commission has responded positively to our call to set up an informal working group of Member States to input into the design and discuss wider coordination on climate change financing. They have agreed to organise a first meeting soon after the New Year, and we shall use this opportunity to help them work out management and governance structures that are compatible with our own ambitions and with directions that came out of the Bali negotiations.

I hope you find this additional information useful. Thank you for releasing the Communication from scrutiny.

16 January 2008

GREENHOUSE GAS EMISSION REDUCTION COMMITMENTS (5849/08)

Letter from the Chairman to Phil Woolas MP, Minister for the Environment, 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 19 March 2008.

We share your view that the distribution of effort among the Member States of the European Union must be fair. While we do appreciate the need to ensure sustainable economic growth across the EU, we consider it regrettable that no indication of the calculations used has been given by the European Commission. We would therefore urge you to work with the European Commission to ensure that the targets are indeed fully justified. Publication of “whole economy” figures may well help in providing greater transparency in order to compare future targets against previous achievements.

In your EM you expressed some concerns about the restrictions placed on Member States in terms of how the targets are met. We agree that the restriction on the level of external credits that can be used is small and would support an upward revision of this limit. We would caution, however, against too much flexibility in this regard as it is clearly important to ensure that a sufficient level of emissions reductions do take place within the European Union.

We shall maintain the proposal under scrutiny and look forward to information from you on the progress of negotiations in relation to the issues highlighted above.

20 March 2008

INDUSTRIAL EMISSIONS: IPPC DIRECTIVE (5088/08, 5223/08)

Letter from the Chairman to Joan Ruddock MP, Minister for Climate Change, Biodiversity and Waste, 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 6 February 2008.

We consider the simplification aspects of the proposal to be very welcome and we support, too, the reinforcement of the Best Available Technique (BAT) concept.

We note that there is outstanding work to be carried out on the proposal in order to clarify some of the provisions and to ensure that the Directive does not have an impact that is disproportionate to its objectives. In that light, we look forward to an update on the progress of discussions, particularly with regard to the provisions that still require clarification, and to receipt of your Impact Assessment.
In your EM, you expressed your regret that there is no explicit provision in the recast Directive for the use of market-based instruments such as an emissions trading scheme for sulphur dioxide and nitrogen oxides. We would welcome your views on whether there is any prospect of a mechanism such as you describe being incorporated in the Directive as the legislative discussions proceed.

Finally, we would urge you to seek clarification on how the proposed Directive will stimulate innovation and the development and deployment of new techniques.

We are content to release the Communication from scrutiny but will hold the proposed Directive under scrutiny.

7 February 2008

Letter from Joan Ruddock MP to the Chairman

Thank you for your letter of 7 February about the above Explanatory Memoranda. I am grateful to note the Sub-Committee’s support for the simplification and BAT reinforcement aspects of the proposal.

There is no sign yet of a start to formal negotiations on the proposed recast Directive: the current Slovenian Presidency is not attaching priority to the proposal. However, a discussion at the Commission-convened IPPC Experts Group on 10 March should provide some early indications of the views of the Commission and other Member States on the provisions, particularly those which the UK considers to be in need of clarification. Amongst those we shall pursue is the question of precisely how the proposal can stimulate innovation.

It is open to the UK to propose during negotiations some text which would facilitate emissions trading. Defra officials are considering how best to proceed, bearing in mind that the proposal we expect the Commission to make this coming June for a revised national emissions ceiling Directive may also provide an opportunity.

I will keep the Committee informed of progress.

22 February 2008

Letter from the Chairman to Joan Ruddock MP

Thank you for your letter of 22 February on the above Proposal, which was considered by Sub-Committee D at its meeting of 5 March 2008.

We note that there is no sign yet of a start to formal negotiations on the Directive, but that a meeting on March 10 might offer early indications of how other Member States and the Commission regard individual provisions in the text.

We look forward to receiving further updates if and when the Proposal receives further consideration, and will in the meantime continue to hold it under scrutiny.

10 March 2008

INTERNATIONAL COFFEE AGREEMENT (5237/08)

Letter from the Chairman to Lord Rooker, Minister of State for Sustainable Farming and Food, 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 6 February 2008.

We support the position taken by the Council and we acknowledge that the UK abstained due to the fact that the proposal was still held under parliamentary scrutiny.

We are now content to release the proposal from scrutiny.

7 February 2008
INTERNATIONAL WHALING CONVENTION (16832/07, 16833/07)

Letter from the Chairman to Jonathan Shaw MP, Minister for Marine, Landscape and Rural Affairs and Minister for the South East, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum (EM) on the above dossiers was considered by Sub-Committee D at its meeting of 6 February 2008.

We share your concerns with respect to whaling and therefore consider that the content of the joint policy position proposed by the Commission is sound. We would nevertheless be interested in your views on whether the proposed position may need to be amended in order to secure the agreement of those Member States that take a different view on whale welfare.

As you note in your EM, there are a number of outstanding legal issues. You consider that elements of the legal base, in particular Article 37, may not be appropriate. We should be grateful if you would explain your concerns on the legal base. Do you consider the legal bases other than Article 37 cited in the proposal would be adequate? We would also appreciate your view on whether the competence for external action by the Community in this case is exclusive.

You express some concern that agreement on this decision may set a precedent for the development of negotiating mandates in other multilateral agreements to which the UK is a party. We share your concern and take the view that this is a significant development, the potential implications of which we would not welcome. We would be grateful if you could clarify what position you intend to take in Council.

Finally, the precedent you refer to could presumably apply in other policy areas also. We would therefore be interested to know whether the interests of other Government Departments have been taken into account when formulating your position.

In the light of the above, we are content to release the Communication from scrutiny but we will hold the proposed Decision under scrutiny.

7 February 2008

Letter from Jonathan Shaw MP to the Chairman

Thank you for your letter of 7 February on the above. The negotiations on this dossier have barely got under way and the Presidency and Commission do not anticipate that they will be concluded before the June Environment Council, just ahead of the next annual meeting of the International Whaling Commission (IWC) in Santiago, Chile, from 23–27 June.

First-round discussions at Working-group level suggest that a number of countries would find it difficult to accept the position proposed by the European Commission. Denmark clearly feels it necessary to support some level of commercial whaling to secure the support of the pro-whaling countries for Aboriginal Subsistence Whaling quotas; Sweden, Netherlands, Ireland and Spain fear that a hard Community line on commercial whaling will drive Japan and others to leave the IWC, and therefore wish to see the Community’s position stated in a more flexible manner. Most other Member States had not formed a definitive view. Few of them, apart from the UK, voiced concerns on welfare, but most would probably be unwilling to make welfare a key element of the Community’s position because meaningful welfare conditions have never been considered by the pro-whaling countries to be a legitimate element of any management scheme for whales under the aegis of the IWC.

The Commission showed no willingness to compromise at this stage and the UK representative on the group made clear that any dilution of the position as regards opposition to the resumption of commercial whaling would be difficult for the UK government to accept; moreover, we argued that, to the extent that the proposed Community position might need to be adapted light of negotiations within the IWC, it was surely unwise, in a document which would eventually be a public one, to attempt to set out minimum requirements for support of commercial whaling.

As regards the legal base for the proposed decision, we consider that, since the Community’s interest in the issue is essentially environmental, Article 175 of the Treaty would constitute a sufficient legal base, provided that certain restrictions (outlined below) were placed on its scope, and hence on the areas in which the Community sought to exercise competence. We consider that while Article 37 of the treaty is a possible legal base, it is an undesirable and unnecessary one. Article 37 and the policies derived from it are concerned principally with the growing and harvesting of plants and animals, not with their conservation. Since the rationale of the pro-whaling countries is based on the notion of sustainable harvests, it seems to us unwise for the Community to lend credibility to this notion by citing Article 37 as the legal base (even if only a partial one) for the adoption of a common position.
As far as Community competence is concerned, we consider that the areas in which it may properly be exercised are those in which the decisions of the IWC can be considered to have legal effect, and therefore potentially to compromise the Community’s policy on the protection of cetaceans. This means that the Community should restrict the areas where it seeks to exercise competence to matters concerning the amendment of the Schedule to the Convention. We believe that on this basis, the risk of setting an undesirable precedent is minimised. We have therefore argued, with some support, that the provisions (d)–(h) in the annex to the draft Decision should be deleted. We have also suggested that the Articles of the Decision should contain qualifying phrases such as “where it is appropriate that the Community should exercise competence in respect of decisions of the IWC which could have direct legal effect”.

Although we were concerned about possible precedents, our discussions with others responsible for multilateral environmental agreements have not signalled that the draft Decision gives them cause for alarm. We would, therefore, be prepared to accept it if its terms were firm enough, its legal base were restricted to Article 175 and the content of the annex was restricted as set out above.

13 March 2008

Letter from the Chairman to Jonathan Shaw MP

Your letter of 13 March with reference to the above Proposal was considered by Sub-Committee D at its meeting on 26 March 2008.

You mention that a number of countries would find it difficult to accept the proposed common position, but that the UK would equally find it difficult to accept any dilution of the text. We would request that you keep us informed of the progress of negotiations.

You note that the Presidency and the Commission do not anticipate that the negotiations on this dossier will have been concluded before the next meeting of the IWC. We would therefore be grateful if you could explain what implications this would have for the draft Decision and for the proposed amendment to the Schedule of the Whaling Convention. We are particularly interested to hear whether it is likely that an informal agreement will be reached instead, and if so, what the content of that informal agreement might be.

We have some concern as to the possible encroachment by the Community into areas of Member State competence. Although you are content for there to be a binding Decision establishing a Community position in this case, would such a Decision affect the ability of the UK to pursue its own policy in future, in the IWC or in other areas of activity? We would be grateful if you could address this concern in your response.

With reference to the legal basis for Community competence in this area, we agree that Article 37 TEC would be undesirable for the reasons you give. Moreover, we doubt that Article 37 would be a proper basis for the proposed Decision. If Article 175 were the legal base, we should be grateful if you would clarify the respective powers of the Community and the Member States. Do you consider that there are areas of exclusive Community competence which would require the Community to agree a common approach, or can the Member States choose whether or not a common approach is appropriate? What would be the basis of any exclusive competence? What is the Commission’s view?

In the light of the above, we will continue to hold the proposed Decision under scrutiny.

26 March 2008

Letter from Jonathan Shaw MP to the Chairman

Thank you for your letter of 26 March on the above mentioned Proposal. Progress on this dossier is very slow, there having been only one Working Group discussion (on 4 April) since I wrote to you on 13 March. That discussion revealed significant disagreement amongst Member States and between Member States and the Commission as to the nature, scope and content of the proposal. The Presidency will not put the issue to the Committee of Permanent Representatives (and through them to the Environment Council) unless assured of a qualified majority in favour, which assurance is at present significantly lacking. In the absence of agreement, the position at this year’s annual meeting of the International Whaling Commission (IWC) will be as it has been in past years, namely that while Member States should seek to arrive at a common position, their failure to do so results in Member States being free to pursue whatever line they might individually choose.

I would note that the Community acquires External Competence in environmental matters by virtue of adoption of internal rules. This is on the basis of “shared” competence. We would not accept that this is “exclusive” competence as Article 176 of the EC Treaty permits Member States to take stricter measures in respect of legislation based on article 175. The Council Legal Service and the Commission (or at least parts of it) would argue that the Community has “exclusive” competence for the IWC by virtue of the Common Fisheries Policy. As you know, we disagree with that interpretation.
The Community can reasonably claim to have competence for certain whaling matters by virtue of two pieces of environmental legislation (1) the CITES Regulation, which regulates trade into the Community of products derived from whale species and controls commercial activity within the Community for whale species, and (2) the Habitats Directive, which establishes a strict protection regime for whales and other cetaceans within Community waters.

As regards the respective powers of the Community and Member States, the Community has external competence in the IWC to the extent of the scope and nature of the two pieces of Community legislation referred to above. Where the Community has not legislated Member States retain competence.

The principal points of contention are as follows:

— Legal Base: the Presidency and most Member States favour a legal base which is restricted to Article 175, since the import of the draft Decision is essentially environmental; the Commission, Council Legal Service and some Member States (those whose remit on whaling is carried by Ministers responsible for fisheries rather than the environment) favour a wider legal base including Article 37; the choice is not simply a matter of legal probity—as noted above, the Commission would claim exclusive Community competence in respect of a measure adopted under Article 37 but would be unable to do so in respect of Article 175.

— Nature of the Instrument: some Member States would prefer to see any Community mandate adopted as a set of draft Council Conclusions rather than as a Council Decision; the Commission has proposed the latter course and the Presidency would be failing in its duty were it to seek to replace that proposal with a lesser one.

— Period of Operation: most Member States and the Presidency would be content to see any decision adopted stand only in respect of IWC60; the Commission would prefer a more or less permanent mandate, subject to change only as the position within the IWC changed.

— Coverage of the Common Position: the Presidency, the UK and some other Member States believe that the content of any common position should be confined to matters in respect of which decisions at IWC60 might have legal effect; this means essentially that it should be concerned only with proposed amendments to the IWC’s Schedule (and perhaps proposals for changes to the Convention which would aim to bring Special Permit (“Scientific”) whaling under IWC control; the Commission and other Member States would seek a common position on a wider range of possible IWC decisions, including the future of the IWC’s Conservation Committee (which is not a decision-making body in its own right) and possible votes on IWC Rules of Procedure.

— Nature of EU Commitment to IWC Moratorium on Commercial Whaling: the UK and some other Member States believe that the Community’s commitment to the moratorium should be absolute; others believe that the EU should be prepared to show some flexibility although they are entirely unclear on the extent of such flexibility and on the conditions which would have to be met for it to come into play; we consider that any indication of flexibility on the part of the Community is undesirable for a number of reasons; first, it sends an inappropriate signal to those seeking change; second, insofar as the detail of the EU position is unlikely to be worked out in advance, the scope for debate and probable dispute in on-the-spot coordination will be very wide and much time and effort will be spent on trying (probably unsuccessfully) to coordinate a Community position; the practicalities of EU coordination at the IWC will be difficult in any case because the IWC is not used to having to make time for it and most other parties to the IWC would question the value of doing so in what is usually a packed program.

Overall Benefit: the Commission and those Member States which are broadly favourably disposed towards the exercise of Community competence in this area assert that its principal advantage is that it will allow the EU to speak with a common, if not a single voice such that ‘rogue’ players like Denmark will be bound to pursue the EU line; Denmark has made it quite clear that she will be bound by any common position only to the extent that, in being so bound, she does not prejudice the legitimate interests of the Faroes or Greenland—as she is legally entitled to claim under Protocol 25 to the Maastricht Treaty, any supposed benefit may therefore be illusory.

Under these circumstances it must be questionable whether continued negotiation will result in the determination of a position which would command qualified majority support in the EU and whether the UK could support such a position once arrived at.

Ceding competence to the EU in an area where it has not before been exercised inevitably entails some degree of risk that the decision will be taken as a precedent for other nearly, or not so nearly related areas. We do not believe, following exhaustive investigation, that ceding competence on IWC matters involves a greater risk.
than might be the case with other issues, nor that doing so would pose particular threats to other areas of Defra’s responsibility.

24 April 2008

KYOTO: PROGRESS TOWARDS MEETING OBJECTIVES (15898/07)

Letter from the Chairman to Phil Woolas MP, Minister for the Environment, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum (EM) on the above Communication was considered by Sub-Committee D at its meeting of 30 January 2008.

We consider too that the Communication is helpful and we hope that it will be useful as a reference tool over the next year as discussions on the Energy and Climate Change package progress.

We are content to release the Communication from scrutiny.

30 January 2008

LIVING MODIFIED ORGANISMS (LMOS): DAMAGE RESULTING FROM TRANSBOUNDARY MOVEMENTS (13078/06)

Letter from Phil Woolas MP, Minister for the Environment, Department for Environment, Food and Rural Affairs, to the Chairman

I am writing to inform you of an amendment to the negotiating directives in relation to the international rules and procedures in the field of liability and redress for damage resulting from transboundary movements of living modified organisms to be adopted under the Cartagena Protocol on Biosafety.

In June 2007, the European Council adopted a sui generis Decision with no legal basis to grant a negotiating mandate to the Commission as regards matters falling within Community competence. It laid down negotiating directives to ensure that any international rules and procedures on liability and redress for damage resulting from transboundary movements of GMOs are consistent with relevant Community legislation (the Environmental Liability Directive 2004/35/EC), and with the basic legal principles of Member States’ laws on liability and redress; to take account of the capacities of developing countries; and should not be legally binding but take the form of a COPMOP decision recommending that Parties implement such rules and procedures and undertaking to review their implementation and effectiveness and to consider the need for further action. The Explanatory Memorandum in relation to this Decision was submitted to your Committee on 5 October 2006 by Ian Pearson.

At the time the Decision was made, the Council recorded in its minutes that it would be necessary to keep the negotiating directives given to the Commission under review in light of negotiations. A review took place at the Working Party on International Environment Issues on 4 April 2008 where it was agreed that the negotiating directives required some modification to enable the Community to fully engage in the final stage of the negotiations and to contribute to the success of the discussions at COP/MOP4 in May 2008. The proposed amendment is to the third provision of the negotiating directive which now states that if legally binding rules are “necessary to secure a successful outcome for the negotiations, the administrative approach alone may be subject to legally binding rules”. The decision will be voted on at General Affairs Council on 28 April. Subject to responses from a Cabinet Committee write round the UK will support the draft revised mandate.

21 April 2008

MARINE ENVIRONMENT PROTECTION (13700/05, 13759/05)

Letter from Jonathan Shaw MP, Minister for Marine, Landscape and Rural Affairs and Minister for the South East, Department for Environment, Food and Rural Affairs, to the Chairman

I am writing to update you on the progress of this dossier.

Following the adoption of the Common Position, the European Parliament’s Environment Committee voted on its Second Reading amendments on 9 October. The amendments that it adopted include some that we positively support, such as a requirement to include marine protected areas in programmes of measures. However others are more problematic. In particular, they would require Member States to achieve an overly ambitious and prescriptive definition of good environmental status (GES) by 2017 with no safeguard on avoiding disproportionate cost.
Member States have considered the Environment Committee’s proposed amendments and negotiations are currently underway under the Portuguese Presidency to try to secure a Second Reading deal. I support the goal of a Second Reading deal. It is preferable to risking conciliation and would ensure that the Directive is implemented sooner and delivers improvements to Europe’s marine environment more quickly. Other Member States are also keen to achieve this although the Presidency recognises that Member States will not support a deal at any price.

Member States have indicated a willingness to compromise in several areas. They are willing to give some ground on the definition, and descriptors of GES to seek to marry the Council and the European Parliament’s proposals. In agreeing a compromise, it will be important that the descriptors of GES are ambitious but realistic as some of the European Parliament’s descriptors are overly ambitious and put the concept of sustainable development at risk. Member States can also agree with the Parliament’s proposal to make marine protected areas a compulsory element of programmes of measures and propose to include references to commitments made on these in the Recitals.

Member States have also indicated that they can compromise on the intermediate target dates for implementing the Directive (but not on the 2021 target date for GES). This would see the deadlines for setting environmental targets, establishing monitoring programmes and developing and implementing measures brought forward by one or two years. There is also support for a compromise on the role of the Commission, which would give the Commission a “guidance” role in overseeing the implementation of the Directive. Member States also propose to include coastal waters in the scope of the Directive, but not tidal waters, with a view to ensuring that duplication in the waters covered by the Water Framework Directive is avoided.

Member States do not support the Parliament’s proposal to require a single, joint Marine Strategy to be developed per region and the Presidency does not propose to compromise on this. The Common Position includes a clear requirement for Member State cooperation in implementing the Directive but the legal onus on implementing Directives must rest with individual Member States. A single, joint strategy per region would also risk driving down the level of ambition by Member States in the region concerned to the lowest common denominator.

As part of a Second Reading deal, Member States have indicated that they are willing to strengthen the overall objective of the Directive although there is concern that an agreement to “achieve” GES in absolute terms by a target date, as proposed by the Parliament, is too ambitious. This is because natural variability in the marine environment could mean that GES can never be achieved and because of the time it will take for some measures to take effect. The Common Position already requires Member States to put in place measures to achieve or maintain GES but without the automatic risk of infraction if the measures fail to achieve GES by a target date. Member States are willing to support a stronger form of words than “aim to achieve” GES, with current thinking being that Marine Strategies should be “designed to achieve” GES.

The Presidency also proposes to retain the safeguard in the Common Position on Member States not being required to incur disproportionate cost, which the European Parliament has proposed to delete. I strongly support this stance. Without this safeguard, we risk signing a blank cheque in the implementation of this Directive. However, some Member States would prefer this safeguard to be set out in Article 14 on “exceptions” to make it clear that invoking this safeguard will be the exception rather than the norm. I would see this as an acceptable compromise.

The Parliament also adopted some amendments on a small number of other issues that are of political importance to the Parliament but are not key priorities for the UK in the context of this Directive, such as the protection of the Arctic and waters beyond European waters. Member States are willing to show flexibility on these amendments with a view to securing acceptable text.

The Commission’s original proposal also implied that the UK had no sovereignty over Gibraltar because it omitted the UK from the countries listed as bordering the Western Mediterranean sub-region. The Common Position resolved this by deleting the names of Member States listed for each regional sea. This was a vital-amendment from the perspective of the UK’s sovereignty over Gibraltar. However, it did not affect the aim of the Directive or how it will be implemented and this amendment was acceptable to the European Parliament.

The first informal trilogue took place on the 5 November. This confirmed the possibility of an agreement at Second Reading and discussed possible compromises on marine protected areas, the role of the Commission and the scope of the Directive. The second informal trilogue is scheduled to take place on 19 November and a third is likely to take place in late November or early December. The Plenary vote in the European Parliament is expected to take place on 11 December.

I shall write to you again to let you know the outcome of Second Reading negotiations.

26 November 2007
Letter from Jonathan Shaw MP to the Chairman

I am writing to update you on progress of this dossier following my letter of 26 November 2007.

Agreement has been reached on the terms of a draft Marine Strategy Directive following its second reading at the European Parliament’s Environment Committee on 10–13 December 2007. The draft Directive is due to be presented to Council shortly for adoption.

The second reading agreement followed discussions between the Council, the European Parliament, and the European Commission with a view to avoiding the need for a conciliation procedure. The Presidency of the Council consulted Member States fully on a possible package of measures to be put to the European Parliament in the light of the proposed amendments made in October by the Parliament to the Common Position. The Government was content with the way these discussions proceeded and the eventual agreement, the key elements of which can be summarised as:

— the overall objective of the Directive: this would require Member States to take the necessary measures to achieve or maintain good environmental status (GES) of their waters by 2020 at the latest, rather than the 2021 timeline of the Common Position. The intermediate dates for transposing the Directive, setting targets, implementing measures, and monitoring would also be brought forward by one to two years.

— the definition of good environmental status (GES): some additional descriptive language proposed by the Parliament was incorporated into the definition along that about certain human activities when setting environmental targets. The changes do not affect the ecosystem based approach we and others pressed for,

— costs: the UK along with other Member States maintained our argument successfully for a provision on disproportionate costs to be retained in the Directive. We would have preferred that this provision would have applied to the initial assessment of marine waters. However, importantly it does apply to the other key aspects of the Directive such as the programme of measures, and the timing of the initial assessment—by 2012—remains as it was under the Common Position.

— role of the European Commission: the Commission will have a guidance role, rather than the approval role previously sought by the Parliament. This will help Member States be able to deliver real improvements by co-operating effectively through the regional seas conventions, such as OSPAR the Convention for the North East Atlantic.

— marine protected areas: such areas will be required to be included in the programmes of measures and for information to be publicly available, reflecting the importance of marine protected areas under our international marine commitments.

To sum up, this is a challenging but achievable outcome with sensible safeguards on cost effectiveness, and will help Member States deliver better protection for their waters. We are already establishing the measures necessary to assess our waters. The Marine Bill will enable the UK to take a leading role in implementing the Directive in a way which reflects UK needs and priorities, and demonstrates leadership within the European Union and internationally.

17 March 2008

MARKETING OF FRUIT PLANT PROPAGATING MATERIAL AND FRUIT PLANTS INTENDED FOR FRUIT PRODUCTION (5877/07)

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

I am writing to update you on developments regarding the above Explanatory Memorandum (EM).

Since the EM was submitted we have completed a consultation exercise to gauge the views of stakeholders and to help develop UK negotiating objectives in relation to the Proposal. Should the Committee wish to peruse the papers, they are available at http://www.defra.gov.uk/corporate/consult/dir9234rev-fruitplants/index.htm. In particular, the Committee may be interested to note the Impact Assessment (copy attached), which is produced in the new format and replaces the earlier Regulatory Impact Assessment which was submitted with the EM. The outcome of the Assessment supports the view that, potentially, the benefits associated with the Proposal could outweigh the additional costs involved through additional inspections and tighter requirements etc. Improved harmonisation and consistency could result in greater market opportunities and fewer quality problems.
However, it will also be important to avoid the introduction of unnecessary new burdens and restrictions on the industry. This was a key theme in the consultation exercise, with comments being received principally in relation to the following areas.

— Certification: it was agreed that some degree of harmonisation would be helpful, but not a prescriptive EU-wide scheme.

— Conformitas Agraria Communitatis (CAC) material: there was resistance to the prospect of compulsory official inspections of all stocks to be marketed at this category.

— Simplification measures: general support for revised measures on approval of suppliers and laboratories, but some support for record keeping in excess of the proposed 12 months, to reflect the lengthy period that fruit plants take to grow and during which potential problems may develop.

— Variety identification: general support to retain options for those varieties which do not have plant breeders’ rights or are entered on a national list.

We have prepared negotiating objectives in relation to these four areas, which take account of the comments received, and a copy is attached for the information of the Committee. To achieve these objectives we will clearly need to develop support from other Member States. Generally, our best prospects for alliances lie with northern Member States (e.g. Germany, Netherlands and Scandinavian countries) which in this area at least appear more sympathetic to better regulation; the indications so far are that southern Member States (e.g. Greece, Spain, Italy) and some of the newer Member States prefer additional prescription and increased official involvement.

There have been three meetings of the Council Working Group now and at the most recent meeting (16 November) the first read through of the text was completed. Discussions will now move into the phase of considering drafting amendments and resolution of outstanding issues, including those mentioned above. Agreement of key negotiating objectives has been an important element of our preparations for this next phase. Slovenia wish to make further progress on the dossier a priority, in the hope of completing detailed discussion (and possibly adoption) during their Presidency (which starts in January).

It remains to be seen whether this is an overly optimistic timetable, but we are preparing ourselves for the possibility of intensive discussions during the early part of 2008 (the next Council Working Group meeting has already been arranged for 18 January). With the Committee’s agreement, I would like to report back on the Council Working Group consideration, once we are clearer about the extent to which our negotiating objectives are likely to be achieved. I will do this at the earliest opportunity possible, so that we can take account of the views of the Committee before entering the final phase of discussions.

10 December 2007

ANNEX

NEGOTIATING OBJECTIVES FOR THE RECAST OF DIRECTIVE 92/34: MARKETING OF FRUIT PLANT MATERIAL

<table>
<thead>
<tr>
<th>Issue</th>
<th>Ideal</th>
<th>Fallback</th>
</tr>
</thead>
<tbody>
<tr>
<td>Certification: degree of harmonisation</td>
<td>Continued recognition of national schemes, with greater transparency between member states.</td>
<td>Link to EPPO requirements.</td>
</tr>
<tr>
<td>Compulsory official inspections for CAC material</td>
<td>Random monitoring permitted, as at present.</td>
<td>Possibility of delegating checks to industry.</td>
</tr>
<tr>
<td>Simplification measures:</td>
<td>Retention of proposals for supplier registration and revocation of laboratory accreditation.</td>
<td>Increase of proposed record keeping requirement, from 12 to 24 months.</td>
</tr>
<tr>
<td>— replacement of supplier accreditation with registration</td>
<td></td>
<td>3 year record keeping requirement, as at present.</td>
</tr>
<tr>
<td>— revocation of laboratory accreditation.</td>
<td></td>
<td></td>
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<tr>
<td>— reduced record keeping requirement.</td>
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</tr>
<tr>
<td>Variety identification</td>
<td>Retention of supplier’s list option.</td>
<td>Amnesty for existing varieties.</td>
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</table>
MERCURY: NEGOTIATIONS TOWARDS A LEGALLY BINDING INSTRUMENT (6459/08)

Letter from the Chairman to Phil Woolas MP, Minister for the Environment, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum on the above proposal was considered by Sub-Committee D at its meeting of 2 April 2008.

We concur with your assessment of the circumstances in which it would, and would not, be appropriate for the Commission to represent the Member States in international negotiations on a legally-binding instrument on mercury—namely that the Commission should lead in areas where the Community has exclusive competence, but that it should not lead in areas where the Member States retain exclusive competence.

However, we are not clear on your position with respect to areas of shared competence. We would be grateful if you could clarify whether the Commission is seeking to take the lead in negotiations affecting areas of shared competence, and if so, whether you object to this. We are particularly interested to hear whether your stance in this respect applies to all relevant areas of shared competence or only to a sub-set thereof.

You mention that it is not yet certain that the process launched by UNEP will lead to international negotiations on a legally-binding instrument on mercury, nor is it clear that the nature of the deliberations in the working group will come to resemble those of an international negotiating committee. Could you clarify whether the UK Government is participating in the relevant working group, and whether these assessments are therefore based on first-hand experience?

You note that although you do not support the Commission’s recommendations, you would be prepared to acquiesce if they attract sufficient backing from other Member States. We would be grateful for your assessment of the likelihood of the proposal attracting the necessary support from other Member States, and for an indication of the reason why you would be content to waive your reservations in these circumstances.

In light of the uncertainties raised above, we will hold this Recommendation under scrutiny.

2 April 2008

Letter from Phil Woolas MP to the Chairman

Thank you for your letter of 2 April 2008, regarding the consideration by Sub-Committee D of the Explanatory Memorandum on the above proposal. You requested clarification of three points.

Firstly, you ask whether the Commission is seeking to take the lead in negotiations affecting areas of shared competence. At present the recommendation appears to be limited to areas where the Community has exclusive competence i.e. the international trade in mercury. Such exclusive competence stems from a trade legal base (article 133 of the EC Treaty) attaching to the provision of the proposed mercury Regulation currently undergoing second reading by the European Parliament that seeks to ban the export of mercury from the Community. Other aspects of the Regulation, essentially concerning safe storage and disposal of mercury, are governed by an environmental legal base (under article 175 of the EC Treaty). Consequently, if the scope of the issues covered in the recommendation are extended to cover negotiations on questions of environmental protection, such as storage conditions, in addition to trade—as we believe to be appropriate—the Community will acquire competence in a field of shared competence. In such circumstances the UK would want to limit the Commission’s negotiating role under the proposed mandate to matters falling within the field of Community competence, essentially those covered by the Regulation. Other issues falling under shared competence for which the Community had not introduced or proposed internal rules would remain within the competence of Member States and therefore outside the scope of the mandate.

In terms of the actual conduct of negotiations, the UK favours a so-called “team EU” approach whereby both Commission and Member States act collectively, deploying the most qualified people from both to lead for the EU on particular topics under discussion. This ensures that the EU punches its weight and uses its considerable resources effectively and efficiently before mixed competence forums.

Of course any negotiations on the content of a mandate should occur only at a stage when actual discussions before an intergovernmental negotiating committee are anticipated. This will only be the case following any decision of the UNEP Governing Council at its twenty fifth session next February. As has been explained, the UK’s general policy is that negotiating mandates are to be granted only where the forthcoming discussions will have legally-binding consequences. As we consider it premature to expect the current UNEP procedures to lead towards a legally binding instrument, we do not therefore support the Commission’s recommendation at this stage.
Secondly, I can confirm that the UK Government is actively participating in the UNEP Open-Ended Working Group (OEWG) on Mercury. Three officials from my Department attended the first meeting last November, with one elected as Chair. So our assessment of the process launched by UNEP is based on first-hand experience.

Finally, you asked about the likelihood of the Commission’s proposal attracting sufficient support. From informal contact at official level, we are aware that at least four other Member States take a similar view to the UK and it is foreseeable that other Member States might support that position. However, we have as yet no estimate of likely support for the Commission. We would acquiesce to the Commission’s recommendation if we were in danger of becoming isolated, or part of a very small minority as negotiating mandate decisions in these areas are subject to adoption by qualified majority voting.

22 April 2008

MILK QUOTAS (16466/07, 16476/07)

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

Your Explanatory Memorandum (EM) on the above documents was considered by Sub-Committee D at its meeting of 23 January 2008.

We support the ending of milk quotas by 2015 but agree that consideration needs to be given to the adaptation of the sector during the period before the ending of quotas. A quota increase should assist producers in being able to respond directly to the market without financial penalty.

You note that the proposed increase comes ahead of, and is separate to, decisions on milk quotas in the CAP Health Check and you consider that a “longer adjustment period” is useful for the industry. Could you clarify for us please what approach you plan to take on milk quotas within the context of the Health Check?

We are content at this stage to release the proposal and the report from scrutiny, and we look forward to your response on the point raised above.

23 January 2008

Letter from Lord Rooker to the Chairman

Thank you for your letter of 23 January about the above Proposal.

You asked about the approach we intend to take on milk quotas within the context of the Health Check. The areas for discussion relating to the dairy sector laid down in the Commission’s Communication on the Health Check, published in November 2007 appear to be largely in line with the Government’s position and are therefore welcome.

Clearly once legislative proposals are published in May 2008, a formal consultation of UK stakeholders will be undertaken. Without wishing to prejudge the publication of the proposals or the consultation, it is no secret that the Government has long argued for the abolition of milk quotas, believing that they distort the market. This we will continue to do. We want farmers to be able to take advantage of expanding EU and global market opportunities and for those market signals to be transmitted more clearly.

Other broad principles we intend to follow during the negotiations:

— we agree that there should be a soft-landing for the dairy sector.
— we believe the method chosen for phasing out quotas should be clear, simple (we do not want to see a system which complicates a dying scheme), and should not increase the value of quotas.
— a phased expansion of quotas appears to be the preferred option for phasing out quotas and thus ensuring the soft-landing. It is simple and clear, and would not increase the value of quotas. Other options or combinations (for example reducing the super levy) have not been ruled out, but, as noted above, we do not want to complicate the system. However, we are strongly opposed to any suggestion of allowing the cross-border trading of quotas. It would be administratively complex (for Member States and the Commission) would complicate controls, and potentially increase the value of quota in some Member States (imposing an unnecessary cost burden on farmers wishing to expand production).
— we want clear messages to be given soon about the future of milk quotas and clear indications given to farmers soon about the method and timetable for their phase out. Certainty is needed quickly.

— we will also be pressing for the review and reform of the rest of the common organisation of the market for milk in parallel.

I would also like to take this opportunity to update you on the outcome of the consultation which we undertook to do in the Explanatory Memorandum.

The consultation has been run in two stages because of the short timescale involved. Should the proposal be accepted, it will apply from 1 April 2008 and we believe that the Presidency expects to have reached political agreement on the proposal at the March Agriculture and Fisheries Council.

The first stage of the consultation focused on the most urgent aspect of whether or not to support a 2% increase. We have now completed our analysis of the responses to this stage of the consultation, to which we received 14 responses. The information provided has confirmed our initial analysis of the proposal, and the majority stakeholders have indicated support of the proposal to increase quotas.

The second stage seeks views on the proposed method of allocating the additional quota, should any increase be agreed. Comments on this aspect are required by 29 February 2008. The majority of respondents have covered both aspects and we do not expect comments received subsequently to differ from those already expressed. Therefore, unless something unexpected occurs, we do not think it will be necessary to write to you again.

A paper presenting an analysis of the consultation responses we received is attached. This is also being made available on the Defra Website at: http://defra.gov.uk/corporate/consult/milk-quota/index.htm. We will update this paper following the end of the second stage of the consultation.

4 February 2008

ANNEX

DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS

SUMMARY OF RESPONSES TO THE CONSULTATION ON A PROPOSAL FOR A 2% INCREASE IN NATIONAL MILK QUOTAS FROM 1 APRIL 2008

BACKGROUND

The consultation was conducted in two stages because of the timetable for adoption at EU level. The first stage of the consultation ran from 8 to 17 January, and sought views on the Commission’s proposal to increase EU milk quotas by 2% from 1 April 2009. The second stage runs until 29 February and seeks views on how the additional quota should be allocated, if the proposal is accepted. This summary will be amended following the completion of the second stage of the consultation.

The proposal for a 2% increase in milk quotas followed the publication by the Commission of a dairy market outlook report. The report concluded that a 2% increase in EU milk quotas was justified given increased demand for dairy produce both within the EU and on the world market.

RESPONSES

The consultation (which was run separately in England, Scotland, Wales and Northern Ireland) received a total of 17 responses (listed in Annex 1), which represents a response rate of almost 20%. These included responses from farming organisations, representatives of the processing and co-operative sector, researchers, consultants, quota brokers and lobby groups.

OVERALL ATTITUDES TOWARDS THE PROPOSAL

The majority supported the 2% increase in 2008 (including the National Farmers’ Union, the Food and Drink Federation and Royal Association of British Dairy Farmers). They considered that the market conditions were right for an increase now and that this would help the sector to adjust.

Several respondents, although supportive, highlighted that the increase would have no direct impact or benefit for UK producers.
One respondent, though supportive, expressed caution about allocating the whole 2% now, suggesting that some of the increase be held back to see how markets developed.

**Concerns Raised by Respondents**

Two respondents opposed the proposal. Dairy UK expressed concern that the proposal was a knee-jerk reaction to high commodity prices in 2007, prices might fall as a result (especially for butter), there was no immediate benefit for the UK, it might prejudice decisions to be taken under the Healthcheck and that this could damage the UK’s long-term policy objectives. Dairy UK support the abolition of quotas but consider that the phasing out should be done towards the end of their life in 2015.

Vegetarian Economy and Green Agriculture opposed encouraging the production of cow’s milk and considered that alternatives to cow’s milk should be encouraged.

**Issues/Suggestions Not Directly Linked to the Consultation**

Some respondents commented on the future for milk quotas in general. Of those that commented on wider issues, all supported the eventual abolition of quotas (although some wanted action to have been taken earlier or quotas to be abolished now). None of the respondents pressed for the retention of milk quotas beyond 2015.

**Government Response**

As a result of the consultation, the UK Government was better informed of stakeholder views in its negotiations with the European Commission and other Member States.

Thank you to all who took the time to respond to this consultation and give there considered and valuable views.

**Annex I**

**List of Respondes**

Centre for Agricultural, Food and Resources Economics  
Dairy Group  
Dairy UK  
Direct Sellers Co-op Ltd  
Food Aware  
Food and Drink Federation  
Food Chain Centre  
Farmers Union of Wales  
Institute of Grocery Distributors  
Jersey Cattle Society  
Kite Consulting  
National Farmers’ Union  
NFU (Wales)  
Quality Milk Producers Ltd  
Royal Association of British Dairy Farmers  
R Turner and Son  
Vegetarian Economy & Green Agriculture (VEGA)

**Letter from the Chairman to Lord Rooker**

Your letter (4 February) on the above Proposal was considered by Sub-Committee D at its meeting of 20 February 2008.

We note that you are shortly due to conclude the second stage of the consultation process with regard to this Proposal, seeking views on the proposed method of allocating the additional milk quota, should an increase be agreed. Our own view is that the additional quota should not be allocated as a percentage increase in proportion to existing national allocations. We would instead urge you to advocate a different method of allocation, which might allow the UK to secure a greater share of the additional quota.
We have already released the Proposal from scrutiny, but look forward to your response on the point raised above.

22 February 2008

Letter from Lord Rooker to the Chairman

Thank you for your letter of 22 February.

The second stage of the consultation has ended, with no additional comments received. All the respondents who expressed a view on how the additional quota (should it be agreed) should be allocated, supported our proposal—that the additional quota will be allocated to individual UK quota holders on the basis of the net quota they held on 31 March 2008, subject to the conditions laid down in the consultation letter of 9 January.

The proposed 2% increase in milk quotas from April 2008 applies across the board. Each Member State will (should the proposal be accepted) be allocated an additional 2% of milk quota. It is left to Member States to decide how that additional quota should be allocated (or indeed, whether it should be allocated to individual producers or kept in the national reserve). We have concluded that allocating the additional quota as detailed above is both the most equitable solution for UK milk producers, and is the least burdensome to implement.

We do not agree that differentiating the quota increase between Member States would be beneficial for the UK. With production in the UK well below quota while other Member States regularly exceed their quota, there are other Member States who it could be argued, need a higher allocation of additional quota. Given this, the UK could end up with a lower increase. We do not believe that this would provide a level playing field for UK producers and therefore argue that additional milk quotas should be allocated on a flat rate, across the board basis.

5 March 2008

Letter from the Chairman to Lord Rooker

Your letter (5 March) on the above Proposal was considered by Sub-Committee D at its meeting of 12 March 2008.

We accept the case you make with respect to the desirability of allocating additional milk quotas on a flat-rate basis. We have already released the Proposal from scrutiny, and are now content to bring the scrutiny process with respect to this item to an end.

13 March 2008

MODIFICATION OF FISHERIES PARTNERSHIP BETWEEN THE EUROPEAN COMMUNITY AND THIRD COUNTRIES (13994/07)

Letter from the Chairman to Jonathan Shaw MP, Minister for Marine, Landscape and Rural Affairs and Minister for the South East, 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 12 December 2007.

On a policy level, we share your view that the Commission still needs to make the case for this change in procedure and we look forward to receipt of information from you on your discussions in this regard.

In terms of the legal basis, is not Article 300 essentially procedural in nature? Further, Article 300(4), to which the proposal refers, appears to envisage delegation to the Commission on a case by case basis only. We would therefore appreciate your view on whether or not Article 37 provides an adequate legal basis for this proposal.

We have decided to hold the Proposal under scrutiny and look forward to receiving your response to the above points.

14 December 2007

Letter from Jonathan Shaw MP to the Chairman

Thank you for your letter of 14 December 2007 in which you ask for further clarification on the above proposal. I am writing to keep you informed of recent developments on this dossier.

I agree with you and your Committee that the legal basis for this proposal is incorrect. Article 300 (4) only delegates these powers to the Commission on a case-by-case basis and not carte blanche as set out in the proposal. We have received legal advice that a solution to this maybe to include an annex to the proposal listing
each of the third country agreements that would be affected by the proposal. This would allow the Commission to amend Agreements on a case-by-case basis.

That said the reason the Commission have given for proposing a blanket coverage is for simplification purposes. They suggest that to amend the protocol of an individual agreement they would use 300 (4), so for several agreements the Commission argue they could use the same legal basis. We are currently seeking legal advice on this.

Notwithstanding the legal basis, for this proposal we could not accept the Commission’s reasoning on simplification. We feel that the Commission is attempting to solve its own internal procedural problems by getting Council to give up its competence. You should be aware that in discussions at official level in Brussels, no Member State supports this.

There were no in depth discussion other than these two issues on this proposal. It has been left with the current Presidency to reflect on the next steps. I will update you further once this is discussed again.

21 February 2008

Letter from the Chairman to Jonathan Shaw MP

Thank you for your letter of 21 February on the above proposal, which was considered by Sub-Committee D at its meeting of 5 March 2008.

We note that you are currently seeking further legal advice; that no Member State is supportive of the proposal as it stands, and that the Presidency is due to reflect on how best to move forward.

We will continue to hold the proposal under scrutiny and look forward to further updates from you as negotiations progress.

7 March 2008

PLACING ON THE MARKET OF GENETICALLY MODIFIED MAIZE AND GENETICALLY MODIFIED POTATO

Letter from the Chairman to the Rt Hon Dawn Primarolo MP, Minister of State for Public Health, Department for Environment, Food and Rural Affairs

Your Explanatory Memoranda (EM) on the above Proposals were considered by Sub-Committee D at its meeting of 30 January 2008.

We have consistently supported the risk assessment process in place and we agree with the Government that the EFSA opinions on all four of the proposals can be supported.

We are therefore content to release the proposals from scrutiny.

30 January 2008

PLACING ON THE MARKET OF GENETICALLY MODIFIED MAIZE GA21

Letter from the Rt Hon Dawn Primarolo MP, Minister of State for Public Health, Department of Health, to the Chairman

I refer to the Explanatory Memorandum being submitted to the European Union Committee for its consideration. I look forward to hearing the Committee’s reaction to this proposal, but I regret that this cannot take place before the issue has been presented to the Council of Ministers.

The EU procedures for this type of decision require the Council to act on the proposal within three months of it being referred by the Commission. The decisions regarding authorisation of this type of genetically modified maize was considered at the Agriculture Council on 18 February. In this case the timescale has been particularly short, with only two weeks between publication of the document and consideration at Council. As it was clearly not possible to complete the scrutiny procedures before the Council meeting the Government decided, on this occasion, to register an abstention.

It is possible that similar Decisions will be referred to Council in future and, to minimise the risk of similar problems, the Food Standards Agency will endeavour to prepare unnumbered Explanatory Memoranda for the Committee’s consideration at an earlier stage.
I can also report that the Agriculture Council failed to reach a qualified majority either for or against this proposal and the Presidency concluded that the Commission was therefore free to approve it under its own competence.

The same conclusion was reached in relation to four other authorisation decisions for GM food and feed products, three further types of GM maize and a type of GM potato (see document numbers 16782/07, 16783/07, 16784/07 and 16785/07).

29 February 2008

Letter from the Chairman to the Rt Hon Dawn Primarolo MP

Your Explanatory Memorandum (EM) on the above Proposal and your related letter of 29 February were considered by Sub-Committee D at its meeting of 26 March 2008.

We have consistently supported the risk assessment process in place and we agree with the Government that the EFSA opinion can be supported.

We note that the proposal has already been put to a vote in the Council and that the Government chose to abstain because the parliamentary scrutiny procedures had not been completed. While we welcome your commitment to supply unnumbered EMs should similar time pressures arise in the future, we would draw your attention to the Protocol on National Parliaments (annexed to the Treaties). Article 3 of the Protocol stipulates that a six-week period should elapse between a legislative proposal being made available in all languages and the date when it is placed on a Council agenda for adoption, subject to exceptions on grounds of urgency; the reasons for which shall be stated in the act or common position.

While we are content to release the proposal from scrutiny, we would be grateful if you could inform us of the reason why this proposal was deemed urgent and we would appreciate the Government’s assurance that it will seek to ensure that the six week period is, as a rule, respected except on well justified grounds of urgency.

26 March 2008

PLANT PROTECTION PRODUCTS (11755/06, 11896/09, 11902/06)

Letter from Phil Woolas MP, Minister for the Environment, Department for Environment, Food and Rural Affairs, to the Chairman

I am writing to update your Committee on negotiations to develop the above legislative proposals (your letter of 2 November 2006 refers).

The Brussels negotiations, which are being conducted under the co-decision procedure, are proceeding at different speeds. Those relating to the proposed directive on sustainable use being further advanced than those on the authorisation regulation. Although the Commission had originally intended to develop these measures concurrently they appear to be coming to the view that this is no longer practical nor desirable.

On the sustainable use directive:

— the Council Presidency has indicated they are aiming for political agreement in December. An initial read-through of the proposal has resulted in an emerging text which we consider to be generally well-balanced, proportionate and less ambiguous. It should help achieve our goals of raising standards across the Community as a whole, towards the standards here in the UK and allow Member States sufficient flexibility to adopt both statutory and voluntary measures.

— the European Parliament has just completed its first reading and adopted a text which, although it still has some unacceptable points of detail, broadly accords with the government position. For example, the European Parliament rejected proposals from its Environment Committee for: pesticide use reduction targets; 10m buffer zones around water courses; use of taxes or levies; and bans on use in public spaces. It accepted proposals to enhance the provisions relating to training and testing of application equipment; to prohibit or minimise use in public spaces; and permit derogations from a ban on aerial spraying.

The key issues which remain to be resolved are: the scope of the application testing regime (in particular whether to cover knapsacks and other hand-held equipment); compulsory use of buffer zones around watercourses; and adoption of integrated pest management techniques. In each case the Commission and the European Parliament strongly support the inclusion of fairly strict provisions whilst we are looking for more flexibility in these. The current Presidency text goes a long way towards addressing these issues, and the Government is considering whether it can accept this text.

Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, P237.
Negotiations in Council Working Party on the authorisation regulation have been constructive, but several key issues remain to be resolved. There is broad support for the concept of zonal authorisations, but thinking differs as regards the extent to which Member States should retain national flexibility. Similarly, there is general support for the introduction of toxicity and environmental hazard triggers, but differing views on where these triggers should be set. These difficulties should not be insurmountable, but they preclude the possibility of reaching political agreement under Portugal’s Presidency.

In contrast to its more balanced stance on the directive, the European Parliament has taken a highly precautionary position in its first reading report on the regulation, which does not accord with the Government’s view. Of particular concern, the European Parliament proposes:

— removing all zonal authorisation provisions, which would run counter to increased harmonisation and hamper the objective of securing a more level playing field in terms of pesticide availability;
— more stringent hazard criteria, which would have an additional impact on the availability of pesticide products;
— a ‘positive list’ system for co-formulants, which would require them to be approved in the same way as active substances. The Commission proposed a ‘negative list’ system, which the Government considers a more proportionate approach to dealing with the hundreds of co-formulants which are used in pesticide products;
— the introduction of ‘pesticide passports’ to accompany treated produce into the supply chain, which would add significantly to the regulatory burden.

The Commission has already indicated that it cannot accept many of the Commission amendments and we intend to resist them when the Council Working Party considers its common position.

20 November 2007

Letter from the Chairman to Phillip Woolas MP

Your letters of 14 November 2006, 14 March 2007 and 20 November 2007 on the above Proposal were discussed by Sub-Committee D at its meeting of 28 November 2007.

We note that progress has been slow and that the issues raised in my letter of 2 November 2006 are yet to be resolved. Your own letter of 20 November 2007 does not make specific reference to the transitional arrangements between the current regulatory framework and the revised one. We would therefore be grateful if you could clarify whether any progress has been made along the lines that you expressed in your letter of 14 November 2006.

We will maintain the Proposal under scrutiny and we look forward to receipt of information from you as the negotiations progress,

28 November 2007

Letter from Phil Woolas MP to the Chairman

Thank you for your letter of 28 November 2007 asking about progress on developing transitional arrangements between the current regulatory framework for authorising pesticides and the revised one proposed in this Regulation. This was, in fact, one of the last issues to be addressed by the Council Working Party which considered this proposal, and I can now let you know how the matter has progressed.

The Commission’s proposal recognised the need for transitional arrangements. We were concerned, however, that it did not fully reflect the complexity of the existing regime under Council Directive 91/414/EEC, or of national regimes for aspects which are not yet harmonised. We believe the Regulation should provide for the continued application of the Directive to active substances, and to products containing those substances, which are already being processed under the Directive when the new Regulation comes into force. Changing the rules during the course of that process would be unfair on companies, which will have prepared on the basis of rules which were current at the time. It would also be difficult for regulators to manage. We therefore consider that it would be better to complete the process under the Directive’s provisions and apply the new Regulation when these substances are next due for review by the Community.

To this end, we proposed amendments which would provide for the Directive’s rules to be followed in all cases where applications for approval of active substances have passed at least the first formal stage in that process. This is the point at which the dossier has been determined to be complete and thus acceptable to enter the evaluation procedure. These arrangements would apply in all cases, including applications for approval of new active substances, for renewal of approvals which are due for review, and for substances which have been withdrawn from review under the Directive but for which fresh applications for approval have been made.
They would extend through all stages of the approval process up to and including the final stage, at which products which contain approved substances are re-registered in the Member States. I am pleased to say that our proposals have been accepted and included in the Slovenian Presidency’s revised text.

We are also concerned to allow Member States to maintain national rules and procedures for matters which will be included in the harmonised Community regime for the first time when the Regulation comes into force. The Commission proposed, for example, to introduce provisions to exclude from plant protection products any co-formulants which are found to be unacceptable. The Council has proposed introducing a requirement for the authorisation of adjuvants which are added to plant protection products. We have, therefore, supported the inclusion of derogations which will enable Member States to continue to regulate substances such as co-formulants and adjuvants in accordance with national rules, until harmonised Community provisions take effect. Again, I am pleased to say that suitable provisions have been included in the revised text.

In our letter of 14 November 2006, we mentioned a number of other aspects touching on transitional measures. As regards supplementary regulations, the text specifies which measures are considered to amend non-essential elements, inter alia by amending the Regulation, and are thus to be adopted in accordance with the regulatory procedure with scrutiny by the European Parliament. Other aspects will be amended by regulatory procedure alone. The revised text provides for active substances already approved under the Directive to be included in a separate Regulation, the detailed content of which has been left to be determined through comitology. The text also provides for the direct transfer of data requirements as they stand under the Directive, without significant amendment, during the 18 months’ period between the adoption of the Regulation and its coming into force. Lead-in times for introducing any changes to these requirements, and to other supplementary Regulations generally, will again be determined through the comitology process.

The Committee raised concerns on two other aspects of the proposal. As regards zonal authorisation, you will recall that the Commission proposed a system of compulsory ‘mutual recognition’ within zones, under which Member States would have very little scope to adjust use restrictions in order to meet particular national conditions. In contrast, the first reading report of the European Parliament eliminated the zonal authorisation concept entirely. This has proved a difficult issue in the Council Working Party negotiations, on which Member States remain divided. The Slovenian Presidency has developed a compromise which essentially relies on the Commission’s compulsory approach. It would, however, allow other Member States access to the technical dossier for each product, in order to determine whether additional restrictions on use are necessary for risk mitigation. In cases where serious risks remained, even after applying these adjustments, Member States would be able to refuse authorisation. We believe this compromise would provide a powerful impetus for harmonised approaches to risk assessment, in the way that the adoption of harmonised arrangements for maximum residue levels of pesticides in food under Regulation 396/2005 has done for dietary risk assessment. The Regulation includes implementing measures by which these could be introduced.

The toxicity and environmental ‘hazard triggers’ also proved a difficult area in the Working Party’s negotiations, specifically as regards human health criteria, and Member States continue to hold differing views. The Commission’s proposal would exclude substances which are classified as category 1 or 2 carcinogens, mutagens or reproductive toxins (so-called ‘CMR’ substances), or which are considered to have endocrine disrupting properties, unless exposure to them in use is ‘negligible’. It is clear that they intend ‘negligible’ to mean excluding all human contact with the substance or its residues. We estimate that around 5% of substances could be lost to the proposed CMR criteria, and another 10% to the proposed criteria for endocrine disrupters. The European Parliament’s first reading report added to this list substances which are considered to have developmental neurotoxic or immunotoxic properties in humans, although we conclude that these two criteria would have no additional impact at present. The Parliament has, however, proposed far more stringent environmental hazard triggers, which we estimate could lead to the loss of around 40% of substances.

Member States have broadly endorsed the Commission’s approach in the Working Party, but some have been concerned to exclude CMR category 1 and 2 substances entirely, whilst others have been keen to introduce a greater element of risk assessment into the consideration of a substance’s acceptability. We have been concerned to ensure that human health is properly protected, but to keep the impact of these triggers on the availability of active substances within reasonable levels, given their continuing importance in plant protection products and the scope to mitigate the risks they present by setting appropriate conditions of use.

The Slovenian Presidency has now developed a compromise which would exclude category 1 carcinogens and reproductive toxins, and both category 1 and 2 mutagenic substances (because it is generally held that an acceptable threshold cannot be established for these genotoxic substances). It would, however, allow approval of category 2 carcinogens and reproductive toxins and endocrine disrupters where human exposures to these substances pass a risk assessment. We consider this a reasonable compromise, and one which we can support in the interests of reaching agreement on this difficult issue.
The Presidency is expected to seek political agreement on their revised text at the 19 May Agriculture and Fisheries Council. I therefore hope that the Committee is reassured by these transitional measures and can agree to release this item from scrutiny.

27 April 2008

PROTECTION OF SPECIES OF WILD FAUNA AND FLORA (7005/08)

Letter from the Chairman to Joan Ruddock MP, Minister for Climate Change, Biodiversity and Waste, Department for Environment, Food and Rural Affairs

Your EM (Explanatory Memorandum) on the above document was considered by Sub-Committee D at its meeting of 23 April 2008.

We note the concerns that you originally had about three of the proposed amendments but we observe from your letter of 21 April 2008 to Michael Connarty MP, Chair of the House of Commons European Scrutiny Committee, that, upon further consideration, you no longer consider that the proposed changes increase or extend the Commission’s implementing powers.

In this light, we are content to release the proposal from scrutiny.

23 April 2008

SOUTHERN INDIAN OCEAN FISHERIES AGREEMENT (5331/08)

Letter from the Chairman to Jonathan Shaw MP, Minister for Marine, Landscape and Rural Affairs and Minister for the South East, 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 6 February 2008.

We support the conclusion of the Southern Indian Ocean Fisheries Agreement, considering it a worthwhile contribution to the sustainability of the region’s marine resources and to the fight against Illegal, Unregulated and Unreported (IUU) fishing.

We are content to release the proposal from scrutiny.

7 February 2008

SUSTAINABLE FISHING REPORT 2006 (5050/08)

Letter from the Chairman to Jonathan Shaw MP, Minister for Marine, Landscape and Rural Affairs and Minister for the South East, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum (EM) on the above Report was considered by Sub-Committee D at its meeting of 27 February 2008.

We note that the UK Government failed to meet the relevant deadlines. You mention in the EM that the reasons are various and that these relate to the requirements imposed upon the Member States. Could you please expand on these reasons and on the actions that could be taken by the UK and by other Member States to improve reporting in future.

We are content to release the Report from scrutiny but we intend to consider the issues raised during the course of the Committee’s inquiry into the Progress of the Common Fisheries Policy.

27 February 2008

Letter from Jonathan Shaw MP to the Chairman

In your letter dated 27 February on the Explanatory Memorandum on the above report, you requested more details on the reasons for and actions to be taken by the UK to deal with the UK government failure to meet the deadline for submitting this report. There are two key aspects to the problem, related to the level of reporting burdens placed on Member States and also the lack of guidance given to Member States for the production of this particular report, both of which have been raised with the Commission.

On the level of obligations to report information to the Commission that are placed on Member States, you will be aware that fisheries is a heavily regulated area of activity. An exercise carried out in 2004 identified over 300 different reporting obligations arising from EU fisheries legislation, with many of these obligations
involving several reports to the Commission at different times during the year. In addition to these, there are also additional obligations to report to the various international fisheries organisations. A recent estimate of the overall level of reporting involved in the fisheries sector estimated there were over 1,100 different information reports required each year, with the number of obligations and their complexity growing each year as new measures are introduced.

The burden of responding to these requirements is not just one that falls on administrations—the measures will be having an impact on those involved in the fishing industry in the UK that are affected by the measures and are thus required to provide the raw data used to produce the reports. This is why the Commission’s current programme of action to simplify fisheries legislation is regarded as an important area of work by the UK government. As well as this work to identify possibilities to simplify existing legislation, UK officials are also working to ensure that any new measures that are introduced bear in mind the need to simplify, minimise and if possible reduce the burden placed on the fishing industry.

Notwithstanding the high workload these obligations place on Member States, the UK government does regard it as important that these obligations are met. With regards to the production of the report on fleet capacity and fishing opportunity in 2007, to ensure the deadline in 2008 is met the Unit that produces the report has been restructured to include more analytical capacity. This has been achieved through a reclassification of existing posts and the introduction a new post to help deal with the volume of work placed on the Unit they help produce over 400 of the reports due each year from the UK. All posts within the Unit are now occupied and the Unit is operating at full strength. The detailed framework developed during 2007 has been used to commence production of the annual report for 2007 so that it will be submitted to the Commission on time. This latter point is relevant to the other aspect of the reasons for not meeting the deadline for submission of this report last year, in that there has been a lack of detailed guidance on what exactly the report should cover. The issue to be addressed in the report is a complex one. However, the guidelines issued by the Commission to help Member States complete the report are limited and only establish general areas to be covered rather than providing specific advice on the required content.

Since the late submission of the report for 2006, UK government officials have met with their counterparts in the Commission to discuss the report from the UK, which has helped provide a clearer picture of what information the Commission considers should be included. In addition, the Commission has recently circulated and discussed with Member States the advice received from the Scientific, Technical and Economic Committee for Fisheries (STECF) on revised guidelines for Member States. These suggest the inclusion of various indicators related to the use of fleet capacity, the biological status of the fisheries resources, the economic performance of the fishing fleet and an indicator of the benefit to society of the activity. Although the time available for Member States to include such indicators in their reports is limited, especially as the exact nature and methodology for the production of these indicators have yet to be defined, the UK will include what analyses prove possible along these lines in the report for 2007.

I hope this information helps assure you that the UK government is taking steps to ensure that the general and specific issues that have caused this report to be submitted late in previous years are being taken forward.

18 March 2008

Letter from the Chairman to Jonathan Shaw MP

Your letter of 18 March was considered by Sub-Committee D at its meeting of 2 April 2008.

We are pleased to note that steps have been taken to prevent future delays in the submission of the UK’s report on fishing capacity to the European Commission. We would be disappointed if such delays were to recur.

However, we do note the high level of reporting obligations linked to Common Fisheries Policy, and recognize that these pose a challenge for both the administrations and the industry. We hope to address this issue as part of our ongoing inquiry into the Common Fisheries Policy.

We have already released the Report from scrutiny, and are now content to bring this exchange of correspondence to a close.

2 April 2008
SUSTAINABLE USE OF PESTICIDES (11896/06, 11902/06)

Letter from the Chairman to Phillip Woolas MP, Minister for the Environment, Department for Environment, Food and Rural Affairs

Your letters of 14 March 2007\(^\text{11}\) and 20 November 2007\(^\text{12}\) on the above Proposal were considered by Sub-Committee D at its meeting of 28 November 2007.

As we shared several of the Government’s original concerns, we are pleased to learn that the Government has been successful in achieving most of its objectives in the negotiations. Should any further issues of concern to you arise before adoption, we would urge you to inform us. On that basis, we are content to release the Proposal from scrutiny and we look forward to receiving a copy of the Common Position once it has been adopted.

We nevertheless regret that the proposed Plant Protection Products Regulation (11755/06) and the Sustainable Use Directive (11896/06) are not to be adopted alongside each other. We view the separation of closely linked dossiers as a working practice to be avoided in the future.

28 November 2007

THEMATIC STRATEGY ON SOIL PROTECTION (13388/06, 13401/06)

Letter from Jonathan Shaw MP, Minister for Marine, Landscape and Rural Affairs and Minister for the South East, Department for Environment, Food and Rural Affairs, to the Chairman

When I last wrote to you about these proposals on 23 July 2007,\(^\text{13}\) it was in the expectation that I would be giving you oral evidence on them this autumn, ahead of any likely decisions in Brussels. In the event it has not proved possible for your Committee to identify a suitable date for this, so I am writing now to bring you up to date ahead of the next Environment Council on 20 December, at which we believe the Portuguese Presidency will be seeking political agreement on a compromise text which is still under active discussion. I am also taking the opportunity to give you a preliminary report on the public consultation exercise which closed on 19 October and to inform you that a further version of our Regulatory Impact Assessment is nearing completion.

**Progress at Council level**

The Portuguese Presidency has made a major effort to progress this dossier since July with a view to reaching political agreement at the December Environment Council. Discussions are currently taking place on the basis of a Presidency compromise, which is being further revised in the light of Member States comments. As this is a negotiating text it is not a depositable document. However it now seems likely that this (or a variant of it) will be the basis on which Council agreement is sought, rather than the Commission proposals as originally tabled.

In the Presidency compromise some useful changes have been put forward that provide additional flexibility. But there have also been some additions to the scope of the Directive. Key positive changes include:

- The focus of the Directive has shifted towards the sustainable use of soil rather than simply soil protection. This approach is more in keeping with the principles of sustainable development recognising the importance of considering current social and economic pressures as well as environmental protection.
- Articles 6 and 8 have been amended to give Member States more flexibility by making it clear that it is for them to decide on levels of risk acceptability, risk reduction targets and the measures they consider appropriate to achieve these targets.
- The duty to provide soil status reports now no longer includes an obligation to undertake detailed chemical analyses.
- The provisions on soil sealing give Member States greater discretion.
- Some additional clarity for example in relation to the boundaries between coverage of the Soil Framework Directive and the Water Framework Directive.

\(^\text{11}\) Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184 p249.
\(^\text{12}\) Refers to “Plant Protection Products”.
\(^\text{13}\) Correspondence with Ministers, 11th Report of Session 2008–09, HL Paper 92, p169.
There has, however, been less progress on other points of concern to the UK, specifically:

— Soil contamination (Article 10-14): these provisions remain prescriptive and potentially onerous. They require identification of an extensive list of potentially polluted sites, including chemical analyses on those sites where a significant probability of risk cannot be ruled out. The costs of this have been estimated at between £2.4billion and £5.8billion over a 25 year period.

— Soil sealing (Article 5): although the Presidency has amended the text to require measures where they can “reasonably be required” the inclusion of this provision continues to raise issues about the potential impact on plans for regeneration and development.

— Preventative provisions (Article 4): these remain broad and open-ended and do not explicitly take account of existing EU and national legislation especially in relation to the prevention of soil pollution.

— Identifying areas at risk of degradation and programmes of measures (Article 6-8): The procedure for identifying these areas remains rigid, the relationship with existing EC legislation and domestic measures remains unclear as does the extent to which restoration of soil functions is required.

In addition, the scope of the Directive has been broadened to cover acidification, and, to put more emphasis on restoration of soil functions and the protection of soil biodiversity.

The United Kingdom’s concerns on these issues are shared by a number of other Member States and discussion of further possible compromise texts continues.

European Parliament

The European Parliament completed its first reading of the proposals on 14 November, adopting by 510 votes to 160 a substantially amended text.

Some of the amendments voted by the European Parliament would help to bring the Directive more into line with principles of subsidiarity, proportionality and better regulation, particularly in respect of:

— Identification of “priority areas” (Article 6-8): greater flexibility for example by making Annex I, which sets out the methodology for identifying these areas, indicative.

— Soil Sealing (Article 5): inclusion of a threshold for additional regulation of soil sealing and recognition that this needs to be considered within the broader context of sustainable development (see recital 13).

— Contaminated land (Article 10-14): a shorter list of potentially polluting activities reducing the number of potentially polluted sites identified.

— Preventative measures (Article 4): a higher threshold at which action must be taken.

But the European Parliament’s text makes also certain additions to the scope of the Directive. For example it would require codes of practice on soil sealing (Article 5); add a further obligation to monitor the state of soils which goes beyond what is currently required (Article 5(a), require the identification of “priority areas” in respect of additional threats including subsidence, desertification, and soil biodiversity loss as well as acidification; and make the duty in respect of pollution prevention more complex and potentially burdensome (Article 9).

The Council has yet to take a view on these amendments, but it is already clear that a first reading agreement will not now be possible.

UK Public Consultation

A full GB public consultation has been carried out and a summary and analysis is in the process of being finalised. 68 responses UK-wide and 19 relating to Scotland only were received from a wide range of stakeholders, including NDPBs, local authorities, the agricultural community, the property, development and construction sectors, environmental groups and others. The key messages to emerge from the consultation exercise were:

— On contaminated land, the proposals were too restrictive and burdensome with a number of calls for the proposals relating to soil contamination to be dropped altogether.

— On soil sealing, mixed views with the environmental and research sectors supporting additional regulation primarily on the grounds of reduced flood risks. Industry were far more negative as to the need for additional legislation.
— General support for the principle of a risk-area/programme of measures approach to soil degradation threats but with strong support for greater flexibility for Member States as to how they address risks, and clarity that they may use existing measures and also non-regulatory measures such as voluntary codes as well as regulation.

— Overall, the environmental NGOs, environmental protection agencies (Environment Agency, Natural England included) and soil scientists/research bodies were in favour of an EC Directive and industry and agriculture were against.

**Impact Assessment**

An updated version of the initial Regulatory Impact Assessment is in preparation. The key conclusion that this Directive is likely to present disproportionate costs remains. Our current best estimate of the costs of implementing the Portuguese Presidency text are that they would be in the region of £3.3—5.7 billion over a 25 year period. However as the Presidency text is in the process of revision these costs may change in the next few weeks.

**UK Position**

The Government’s position remains broadly as previously indicated. We do not believe the Commission’s proposals are sufficiently proportionate or evidence-based, or that they are sufficiently consistent with the principles of subsidiarity and better regulation. The Presidency compromise appears to be moving in a more positive direction, but further work is needed before we can judge whether an acceptable text will result. On present expectations the Presidency will press for political agreement in December, on a basis which is not yet clear. It is therefore likely that we will not be able to determine a final UK negotiating line before your Committee next meets or before the House rises for the Christmas recess. In those circumstances it may be necessary for us to take a position without clearance, in which case I would write in the usual way to explain what has occurred.

30 November 2007

**Letter from the Chairman to Jonathan Shaw MP**

Your letters of 23 July 2007 and 30 November 2007 were considered by Sub-Committee D at its meeting of 12 December 2007.

May I first take this opportunity to thank you for agreeing to give evidence to the Committee in the autumn and we very much regret that it has not been possible to arrange a date due to a range of pressures on the Committee’s evidence programme.

Your most recent letter offers a useful summary of progress in Council. We continue to believe that any legislation must be fully justified. Like you, we do not consider that the proposals are sufficiently proportionate or evidence-based, or that they are sufficiently consistent with the principles of subsidiarity and better regulation.

Your letter refers to the potentially high costs of the Presidency compromise text and we would share your concerns on that issue.

We note that you have not yet decided on your final negotiating line for the Council meeting but that you will be pressing for more flexible and less burdensome legislation, an objective with which we agree.

Sub-Committee D will meet on 19 December and would have an opportunity to consider at that meeting any further information prior to the Council meeting on 20 December.

We have decided to maintain the proposal and the Strategy under scrutiny and we urge you to keep us informed of developments.

13 December 2007

**Letter from Jonathan Shaw MP to the Chairman**

I am writing in response to your letter of 13 December to inform you of the outcome of discussions at the Environment Council on 20 December.

As you will know the Portuguese Presidency were seeking to achieve political agreement on this dossier and tabled a number of compromise texts for this purpose. However, despite their best efforts Ministers were unable to reach political agreement.
In a final round the UK joined Austria, France, Germany and the Netherlands in indicating that the changes did not resolve a number of outstanding issues, particularly in relation to provisions on contaminated land and soil sealing, or do enough to bring the proposals into line with the principles of better regulation and subsidiarity, in order to avoid unnecessary additional administrative burdens and disproportionate costs.

The UK nevertheless made it clear that it remained supportive of the aims of the Commission’s Thematic Strategy for the protection of soil and of the need for all Member States to take action to improve efforts to preserve this vital natural resource.

The Slovenian Presidency has yet to indicate whether it intends to continue work on this issue.

14 January 2008

WATER SCARCITY AND DROUGHT (12052/07)

Letter from Phil Woolas MP, Minister for the Environment, Department for Environment, Food and Rural Affairs to the Chairman

Thank you for your letter of 17 October 2007\textsuperscript{14} releasing the above mentioned Explanatory Memorandum from scrutiny and requesting to be kept informed of Council’s conclusions.

As you will see Council conclusions have left open the prospect of a European Drought Observatory, with paragraph 21 providing a general explanation of the conditions that may lead to its development. We believe this to be a more considered approach than that of the previous Commission Communication.

However, we will continue to press the Commission to provide further information on the case for establishing an Observatory, including its relation to the work already being carried out by the Commission’s own Joint Research Centre, as well as ascertaining the contribution which the Observatory would make to resolving the problems of drought and water scarcity over and above that made by the Water Framework Directive.

I should add that the Council conclusions do highlight the central role that implementation of the Water Framework Directive will play in addressing these issues (rather than the need for separate legislation) and call on the European Commission to review its water scarcity and droughts strategy by 2012.

Finally, a copy of the draft Council conclusions is enclosed, as requested. It was adopted without amendment at the Environment Council.

6 December 2007

\textsuperscript{14} Correspondence with Ministers, 11th Report of Session 2008–09, HL Paper 92, p180.
**Law and Institutions**
(Sub-Committee E)

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**A EUROPE OF RESULTS: APPLYING COMMUNITY LAW (13407/07)**

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

The Commission’s Communication was considered by Sub-Committee E at its meeting on 14 November. We were particularly interested to see the practical proposals being put forward by the Commission.

We are pleased to see that the Government support “the robust enforcement of Community law” and believe that “a number of the Commission’s proposals” will improve its implementation. This wording suggests that there are some of the Commission’s proposals which the Government might not fully support. We would welcome clarification of the Government’s position.

In your Explanatory Memorandum you say that there would be no financial implications to the Commission’s proposals (some of which would appear to involve more work for both the Commission and Member States). How consistent is this with making progress on this important subject?

We would also be grateful to know whether the Government support the view that Regulations, rather than Directives, should be used wherever appropriate. This would seem to run counter to subsidiarity which generally favours Directives over Regulations.

Do the Government agree that the Commission should be more fully involved in the transposition of Community law by developing guidelines, organising expert group meetings and administrative cooperation?

Do the Government accept that all Directives should include an obligation on Member States to provide the Commission with a correlation table as part of the implementation process?

Will the UK be participating in the pilot project for informal resolution of complaints? If not, why not?

Finally, do the Government support increasing transparency of infringement proceedings?

We look forward to receiving the information requested above. In the meantime the Communication is retained under scrutiny.

15 November 2007

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**AMENDMENTS TO THE RULES OF PROCEDURE AND TO THE PROTOCOL ON THE STATUTE OF THE COURT OF JUSTICE (11759/07, 11824/07)**

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

The proposed amendments to the Rules of Procedure of the Court of Justice and to the Protocol on the Statute of the Court of Justice were considered by Sub-Committee E at its meeting on 5 December. As you recall the Committee supported the proposal for an urgent preliminary ruling procedure when it was first canvassed in the Court’s Discussion Paper. It is regrettable that the proposed draft Council Decisions were not submitted earlier and therefore that the Committee has been given very little time to consider them in detail. You have offered no explanation for the delay. This is extremely regrettable.

Like our sister Committee in the House of Commons, we are surprised that you state that no fundamental rights issues apply to these proposals. We have, however, seen your response to the questions raised by the European Scrutiny Committee and have found the further information provided helpful.

We would welcome sight of the draft Declaration of the Council which is to accompany the two Decisions. It is not clear, for example, whether the Declaration will set out the criteria which will be used for the new Procedure or merely call upon the Court to provide some guidance. We would therefore be grateful if you could provide a copy of the draft Declaration together with an explanation setting out the background, its purpose and any policy implications.

You say that the Government would like to see “proposals from the Court strengthening the oral hearings”. Are you seeking a relaxation of the 30 minutes rule or do you have something more substantial in mind?
We are concerned that no impact assessment has been produced in respect of these two Decisions. You suggest that this has not been possible because the Court has been unable to predict the number of applications it is likely to receive. But presumably some sort of assessment has been made if only to reach the preliminary conclusion that a Chamber of five judges is to be designated to deal with the new urgent preliminary reference rulings. You will be aware that in the context of a not-unrelated document (Doc 11356/06: Commission Communication on the adaptation of the provisions of Title IV TEC relating to the jurisdiction of the Court of Justice) we urged the Government to press the Commission for an impact statement. We await a reply to our letter of 25 October to Meg Hillier MP, Parliamentary Under Secretary of State, Home Office. While, as our scrutiny of the Court’s 2006 Discussion Paper and the Commission’s Communication indicates, we do not deny the urgency which may attach to proceedings in the area of Freedom, Security and Justice, it is a matter of concern that legislative proposals are being brought forward without proper impact assessment. We are sure you will agree.

Finally, we would reiterate a long-standing concern of the Committee, namely the need for appropriate expertise in the Court. Can you assure the Committee that the specialist Chamber envisaged in these proposals or the Court as a whole have or will have experience and competence in the areas concerned?

6 December 2007

Letter from Jim Murphy MP to the Chairman

I am writing in response to your letter of 6 December concerning changes to the statute and rules of procedure of the European Court of Justice introducing a new urgent preliminary ruling procedure in the area of freedom, security and justice.

I very much regret the delay in submitting the Explanatory Memorandum on the Treatment of questions referred for a preliminary ruling concerning the area of freedom, security and justice to the Committee.

We now face a very tight timetable for these proposals. Following in-depth discussions in the Working Group, all Member States have agreed the proposed amendments to the European Court of Justice Statute and Rules of Procedure (including the UK, subject to a scrutiny reserve). A Council Declaration has also been agreed that clarifies certain points of concern to Member States.

As requested, I attach a copy of the draft Declaration of the Council, which is to accompany the two Decisions (which I also attach in final version). The purpose of the Declaration is to set out the common understanding of the Council and the Court as to how the procedure will work in practice.

The intention of the Portuguese Presidency is that the amendments and Declaration will be adopted at their final Council on 20 December. The Rules of Procedure can be approved by QMV. If the scrutiny reserve is maintained, we expect to be outvoted in Council. As the Committee will be in recess after its meeting on 12 December, this is the last time I can request you to consider lifting your reserve before a vote in Council.

As the Declaration makes clear, guidance on the use of the new procedure will be set out in an information note which the Court will provide to national courts. This guidance will be drawn up by the Court with the aim of assisting national courts when deciding whether or a not a particular case may qualify for the urgent procedure, thus increasing transparency and helping to ensure that applications are only made in respect of appropriate cases.

The addition of the minimum 10 working days deadline referred to in the Declaration was intended to address concerns of Member States to ensure sufficient preparation time, though the Court retains discretion to waive this in the most urgent cases. With the aim of further increasing transparency, the Declaration refers to the intention of the Court to produce reports on the use of the urgent procedure.

In the Declaration, the Council invites the Court to adapt the oral procedure to the needs of the urgent procedure. The conduct of the hearing is of course a matter for the Court, but discussion in the working group envisaged that one such adaptation might be a relaxation of the “30-minute rule” to allow intervening Member States sufficient time to make their points, given that they would not be able to submit a written statement. Another might be the addition of a short break between opening statements and statements in reply, to provide parties with time to consider points made for the first time at the oral hearing.

You express concern that no impact assessment had been produced. It is indeed difficult to predict how many references will be made in the future because the decision whether to refer a case to the European Court of Justice rests with national judges. When I wrote to the Commons European Scrutiny Committee on this issue last week, I thought it instructive to look at the trends over the last 20 years. On average, there have been fewer than 18 preliminary references per year.
The figures for the total number of all preliminary references from the UK in the last 20 years are as follows:

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This would suggest that the rate of preliminary references per year will be manageable under the new urgent preliminary ruling procedure.

Finally, you asked for assurance that the European Court of Justice judges who hear cases under the urgent preliminary ruling procedure will have the necessary expertise in the area of freedom, security and justice. As you will be aware, pursuant to Article 223 of the Treaty establishing the European Community, the judges are chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognised competence. The composition of the designated Chamber will be a matter for the President of the Court. Where it is considered necessary, a case under the urgent preliminary procedure may be heard by a Grand Chamber of 13 judges or by the full Court.

9 December 2007

ANNEX A

STATEMENT FOR THE COUNCIL MINUTES

The Council calls upon the Court to provide, in the information note on national courts’ referrals for preliminary ruling procedures, useful guidance for them as to cases in which to apply for an urgent preliminary ruling procedure, in particular in view of tight time limits imposed by national or Community law or serious consequences for the person concerned. The Council calls upon the Court to apply the urgent preliminary ruling procedure in situations involving deprivation of liberty.

The Council notes the Court’s intention of ensuring, with due regard for the urgency of the case concerned, that Member States are allowed the time and translations necessary for drafting written observations and preparing oral arguments in order to guarantee effective and useful participation in the procedure. The Council calls upon the Court to ensure that deadlines in this regard are not, in principle, less than 10 working days, and to adapt the oral procedure to the requirements of the urgent procedure. The Council notes that the urgent preliminary ruling procedure should be concluded within three months.

Lastly, the Council notes the Court’s intention of ensuring, as in the case of any procedure before it, transparency in applying the urgent preliminary ruling procedure, and requests it to submit, no later than three years following its entry into force, a report—the content of which will be updated annually—on its use and, in particular, the Court’s practice of deciding whether or not to launch it.

Letter from the Chairman to Jim Murphy MP

Thank you for your letter of 9 December which has been considered by Sub-Committee E. The Committee is grateful for your providing a copy of the draft declaration/minutes statement to be attached to the Decisions and for the background explanation of its purpose and content. The Committee has decided to clear the document from scrutiny. We would not wish to stand in the way of the UK agreeing to the adoption of these Decisions on 20 December. However, we do think that the need for appropriate expertise on the Court overall, and means of ensuring this, is a point that will be of increasing importance as the Court’s jurisdiction grows. Finally, it remains a matter of concern that no explanation has been given for the delay in submitting the initial
Explanatory Memorandum. We trust that you will have the matter investigated in order to ensure that no such delay occurs again.

18 December 2007

CIVIL LIABILITY AND FINANCIAL SECURITIES OF SHIPOWNERS (5907/06, 14486/07)

Letter from the Chairman to Jim Fitzpatrick MP, Parliamentary Under Secretary of State, Department for Transport

Your Supplementary Explanatory Memorandum was considered by Sub-Committee E at its meeting on 14 November. We are grateful for the very full and clear statement of the Government’s response to the Commission’s Impact Assessment. It is clear that the proposal raises a number of concerns and we note that the proposal has attracted widespread opposition from Member States and the affected industries. It would interest us to learn by whom the strongest objections are being made?

While the European Parliament has conducted a first reading, it appears that there has been very little discussion in the Council’s Working Group and in the circumstances you describe we do not think it would be profitable for the Committee to enter into a detailed examination of the Directive at the present time. You say that it is possible that the Working Group may meet under the Portuguese Presidency towards the end of this year. We would be grateful if you would write letting us know the outcome of that meeting.

The Committee decided to retain the proposal under scrutiny.

15 November 2007

Letter from the Chairman to Jim Fitzpatrick MP

The Commission’s amended proposal for this Directive was considered by Sub-Committee E at its meeting on 5 December. We note that the Government continue to have significant reservations regarding this proposal.

We are grateful for your explanation and assessment of the amendments adopted by the Commission. We agree that a number of the changes proposed by the Parliament raise significant difficulties, in particular the definition of “gross negligence” and the requirement for Member States to ratify or denounce particular Conventions.

As we indicated in our earlier letter (15 November) we would be grateful if you would let us know the outcome of any meeting of the Working Group under the Portuguese Presidency.

The Committee decided to retain the proposal under scrutiny.

6 December 2007

COMBATING TERRORISM (14960/07)

Letter from the Chairman to the Rt Hon Tony McNulty MP, Minister for Security, Counter-Terrorism, Crime and Policing, Home Office

This proposal was considered by Sub-Committee E at its meeting of 12 December 2007.

We note that you are broadly content with the Framework Decision as drafted. Given that there is an existing legal framework here and that the new offences mirror those contained in the Council of Europe Convention on the prevention of terrorism, the amendments proposed appear sensible.

We understand that the UK has not yet ratified the Council of Europe Convention and would be grateful to hear the reasons for the delay.

On the question of human rights, we were disappointed by the absence of analysis in your EM, where you simply conclude that the proposal is ‘in line with Article 10’. We would in future expect a more detailed explanation of the human rights position, particularly where, as in the present case, this is controversial. It is necessary to ensure that any offence does not have an adverse effect on freedom of expression. We note the conclusions of the Joint Committee on Human Rights in its report The Council of Europe Convention on the Prevention of Terrorism (First Report of Session 2006–07, HL Paper 26, HC 247) and agree that the Commission’s proposed offence of public provocation to commit a terrorist offence appears to address human rights concerns with the inclusion of the need for intent and the need for a danger that the offence will in fact be committed.

We are content to release the proposal from scrutiny.

13 December 2007
Letter from the Rt Hon Tony McNulty MP to the Chairman

Thank you for your letter of 13 December 2007 clearing the above document from scrutiny.

You asked about the reasons for the non-ratification of the Council of Europe Convention on the Prevention of Terrorism. The Government fully intends to ratify this Convention. It has not been possible to ratify the Convention so far as it remains under parliamentary scrutiny by the Joint Committee on Human Rights. Once this process is complete we intend to ratify the Convention as quickly as practicable.

I am sorry that you were not satisfied with the amount of detail that we provided in relation to our analysis of the compatibility of these proposals with Article 10. I note that you agree with the conclusion of the Joint Committee on Human Rights that the offence of public provocation to terrorism complies with Article 10. As set out in our Explanatory Memorandum the UK would rely on the offence in section 1 of the Terrorism Act 2006 to give effect to this offence if it is included within the proposed Framework Decision. The Government accepts that section 1 of the Terrorism Act 2006 engages Article 10 of the ECHR because a person’s ability to make statements that encourage terrorism will be restricted. It is the Government’s view that any interference under section 1 can be justified under Article 10(2) as being necessary and proportionate measures for the prevention of disorder or crime. In some respects the offence in section 1 is wider than the offence of public provocation to terrorism that is proposed for inclusion in the Framework Decision. In particular the section 1 offence can be committed in relation to the encouragement of terrorism generally as well as specific offences; the offence can be committed recklessly as well as with intent and the offence does not require that a danger of the offence being committed is created. However, the Government considers that these differences do not affect its analysis of the compatibility with Article 10.

13 February 2008

Letter from the Chairman to the Rt Hon Tony McNulty MP

Thank you for your letter of 13 February 2008 which was considered by Sub-Committee E at its meeting of 5 March 2008.

We are grateful to you for your assurance that the UK will ratify the Council of Europe Convention on the prevention of terrorism as soon as the Joint Committee on Human Rights has completed its scrutiny. We also welcome the further information you provide in your letter as to the human rights position in respect of the offence of public provocation to terrorism.

7 March 2008

COMBATING TERRORISM: ARTICLE 11 OF THE FRAMEWORK DECISION (14957/07)

Letter from the Chairman to the Rt Hon Tony McNulty MP, Minister for Security, Counter-Terrorism, Crime and Policing, Home Office

This Report has been considered by Sub-Committee E.

We note that the Commission remains critical of several areas of UK implementation of the Framework Decision. In light of what you say, we agree that in substance the intended effect of the Framework Decision does seem to have been achieved in the UK.

This is not the first time that we have concluded that the Commission’s criticism of UK implementation of Third Pillar instruments is not fully justified. We disagreed with the Commission’s comments on the UK’s implementation of the European Arrest Warrant in our recent letter to your colleague Meg Hillier, MP. Once again, we suggest that the fault lies not in the transposition of the instrument but in the drafting of the Framework Decision itself. Given that the Commission has no power to commence infringement proceedings in this area at present, discrepancies between the provisions of the Framework Decision and the UK’s implementation may seem relatively unimportant. However, the need for more careful drafting of EU legislation, especially in this field, will no doubt become quickly apparent once the Treaty of Lisbon has entered into force.

We have decided to clear the Report from scrutiny.

18 December 2007
CONDITIONS OF ENTRY AND RESIDENCE OF THIRD-COUNTRY NATIONALS FOR THE PURPOSES OF HIGHLY QUALIFIED EMPLOYMENT: EU BLUE CARD (14490/07)

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

The above proposals for Directives were published on 24 October 2007. The United Kingdom has considered, under the terms of our Opt-In Protocol, whether to participate in the adoption and application of the proposals. We have based our consideration on our desire to play as full a part as possible in the EU’s immigration and asylum acquis. We have taken into account the development of our Points Based System for the management of legal migration in to the EU.

Having carefully weighed up the proposals and the basis of our consideration, the United Kingdom has decided not to participate in the adoption and application of the proposals.

5 February 2008

CONFISCATION OF CRIME-RELATED PROCEEDS, INSTRUMENTALITIES AND PROPERTY (5785/08)

Letter from the Chairman to Vernon Coaker MP, Parliamentary Under Secretary of State, Home Office

This report was considered by Sub-Committee E at the meeting of 12 March 2008.

Given that UK legislation exists and has been construed in litigation before the House of Lords, it is disappointing that, over three years after the agreement of this Framework Decision, the Government have not yet completed an assessment of whether UK law complies with the Confiscation Framework Decision and failed to meet the 15 March 2007 deadline for reporting to the Council and the Commission. We would be grateful for your explanation of the delay.

The Commission points out that few Member States have provided information regarding the implementation of Articles 4 (legal remedies) and 5 (safeguards) of the Framework Decision. How are these provisions implemented in the UK? We would welcome your assurance that your report to the Council and Commission will include this information.

We have decided to retain the report under scrutiny.

13 March 2008

Letter from Vernon Coaker MP to the Chairman

Thank you for your letter of 13 March regarding the report considered by Sub-Committee E.

I apologise for the delay in submitting an assessment to the Council and to the Commission of the measures taken by the UK to ensure that our law complies with the Framework Decision. As indicated in the Explanatory Memorandum on the report which was deposited in Parliament, the UK already has advanced confiscation legislation. We are compliant with the most obvious obligations under the Framework Decision but, before we can report to the Council on the finalised UK position, we are carrying out an intensive exercise to check and produce the texts of our national law that implement all of the Framework Decision. Arrangements are in place for this work to be completed by July.

We are also reviewing whether our domestic legislation’s, the Proceeds of Crime Act 2002, legal remedies and safeguards fully implement the provisions of Articles 4 and 5 of the Framework Decision. So detailed consideration of this issue forms another part of the work we are undertaking to ensure compliance with the Decision.

I note that you are to retain the report under scrutiny and will, of course, copy the report we make to the Council and Commission to the Select Committee on the European Union.

21 April 2008
CONFLICT OF LAWS IN MATTERS CONCERNING MATRIMONIAL PROPERTY REGIMES (11817/06)

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


I am pleased to enclose a copy of the paper (not printed) prepared for the Department by Professor Chris Clarkson and Professor Elizabeth Cooke. The paper was drafted to help the Department in the preparation of the detailed paper from the UK to the Commission promised in the initial UK Response. I should stress that the views expressed in the paper are those of the authors. We are continuing to consult stakeholders and experts on this subject before finalising the detailed paper for the Commission.

I will keep you informed of developments.

4 December 2007

CONSULAR PROTECTION: EU ACTION PLAN 2007–09 (5947/07)

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

This Communication was considered by Sub-Committee E at its meeting of 5 March 2008.

We have previously expressed our preliminary views on the Commission’s proposals in this field following publication of the Commission’s Green Paper in 2006. As you note, the present Action Plan reproduces the same ideas. While we expressed support for measures improving the provision of information and the sharing of best practices and training, we were more cautious as regards the establishment of common offices, although we indicated that there may be a case for such a move. However, we remain of the view, shared by the Government, that Article 20 TEC does not place a duty on Member States to provide consular services. We are also not persuaded that it provides an adequate legal basis for measures on harmonisation or minimum standards of consular assistance.

We would be interested to hear the reactions of the Consular working group (COCON) and whether any decisions have been made as to which of the Commission’s suggestions, if any, to pursue.

We have decided to retain the Communication under scrutiny.

7 March 2008

Letter from Jim Murphy MP to the Chairman

Thank you for your letter about the Commission Communication, reflecting consideration by Sub-Committee E on 5 March.

You asked about the reactions to the Communication of the Consular Affairs Working Group (COCON). As prefigured in the Government’s Explanatory Memorandum of 5 February, the Slovenian EU Presidency have launched a process of discussion of the Communication. At the COCON meeting in Brussels on 1 February, the Commission introduced their Action Plan, focussing on a few specific proposals:

— inclusion in passports of the first sentence of Article 20 of the Treaty establishing the European Community (TEC) (making clear that unrepresented EU nationals in a third country may seek assistance from other Member States’ representations);
— establishment of a pilot joint consular office in a third country;
— a comparative study of consular legislation and practice in Member States;
— establishment of an EU consular website;
— further seminars on specific aspects of consular policy;
— negotiation of a clause in future mixed agreements with third countries formalising the arrangements under Article 20 TEC;
— preparation of a paper on repatriation of remains.

A number of Member States, including the UK, made preliminary comments. These reflected a concern that the Commission was proposing to take a lead on issues—joint consular offices and the proposed study in particular—where it should be for Member States to decide what actions, if any, are necessary or useful.

Objections were expressed to the Commission’s proposal on agreements with third countries, on the basis that this is already covered by the Vienna Convention on Consular Relations (VCCR).

There were mixed views on the insertion of wording from Article 20 in future passports, but a general dislike of the Commission’s idea of printing stickers for interim use. Member States however had no objection to the idea of an EU Consular website provided it did not duplicate existing (national and EU) resources. No objections were expressed to the idea of Commission support for seminars on aspects of consular policy. The next such seminar, proposed, at the Presidency’s initiative, will look at lessons learned following the Indian Ocean tsunami.

It was agreed that Member States would provide their comments on the Action Plan in writing as a basis for further discussion. That discussion is likely to take place either at the next COCON meeting in early April or at the following meeting in June. We will wish to ensure that decisions on consular co-operation are based on Member States’ views as to where there is need for or advantage in further development of co-operation mechanisms, and that those decisions respect the fact that responsibility for provision of consular assistance lies with Member States.

24 March 2008

Letter from the Chairman to Jim Murphy MP

Thank you for your letter of 24 March 2008 which was considered by Sub-Committee E at its meeting of 23 April 2008.

Your summary of the February meeting of the Consular affairs working group (COCON) was informative. We note that Member States will provide comments in writing prior to the next meeting and would be grateful if you would let us see Member States’ comments (in summary form if appropriate) when they are available. We would expect to see the full comments of the Government on the proposals put forward and we look forward to an update from you following the next COCON meeting.

As regards the specific comments you highlight in your letter, we welcome Member States’ support of an EU consular website and Commission support for seminars on consular policy. However, we find it surprising that Member States object to the inclusion of Article 20 wording in passports, although we agree that the use of temporary stickers is unnecessary. It seems to us that this is a helpful and informative initiative and we would be interested to hear why objections have been raised.

We note that some Member States objected to proposals to negotiate a clause in future mixed agreements with third countries to formalise the Article 20 TEC arrangements on the grounds that this was covered by the Vienna Convention on Consular Relations. Is it clear that the Vienna Convention ensures that citizens of one State can be represented by another State, even where the receiving State objects? If so, we would be grateful if you would point out the relevant article.

We have decided to retain the Communication under scrutiny.

24 April 2008

CONTROL OF THE ACQUISITION AND POSSESSION OF WEAPONS (7258/06)

Letter from Vernon Coaker MP, Parliamentary Under Secretary of State, Home Office, to the Chairman

Thank you for your letter of 16 October\(^2\) in which you asked for further information about the progress of the Weapons Directive.

There has been considerable recent progress under the Portuguese Presidency and after a series of meetings with the European Parliament (EP) and Commission representatives there is a clear will to agree a revised text with a view to securing a first reading agreement by a vote in the plenary session of the EP on 28–29 November. The draft would then be put before the Justice and Home Affairs Council for agreement, possibly on 6-7 December.

I outlined in previous correspondence our concerns about the legal base for amending Article 16 of the Directive in accordance with our position on the extent of Community competence in criminal law. The European Court of Justice has recently published its decision on Case C-440-05 which annulled the Council’s Framework Decision on criminal sanctions for ship source pollution. However, it has confirmed the Council’s view that the scope to legislate for criminal sanctions under the Community procedures of qualified majority voting and co-decision with the EP (First Pillar) is very limited. Although the EP is expected to withdraw its amendment to Article 16, there is still wording in the relevant recital which we find unacceptable albeit most

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\(^2\) Correspondence with Ministers, 11th Report of Session 2008–09, HL Paper 92, p 198.
other countries appear to have no problems. We shall continue to press for a revised text along the following lines:

— In some serious cases, compliance with Article 5 of the Protocol requires the application of criminal sanctions and confiscation of the weapons.

Agreement has been reached on a number of the amendments suggested by the EP. We particularly welcomed a proposed amendment on the widening of the scope to include ‘convertible weapons’ in the definition of firearms in the Directive given their use in crime in the UK. There has been agreement on new wording which is wide enough to cover those weapons which have the appearance of a firearm and which could be converted owing to the material from which they are made but not so wide as to cover anything which could, with enough time and effort, be converted.

We were initially concerned about proposals for a centralised, national computer database to enable the tracing of certain categories of firearms. While we broadly support the objective behind the proposal (namely, the tracing of firearms and some parts) we would have preferred this to be achieved by means determined by individual Member States. However, the obligation to set up a centralised weapons register has been modified in a number of important ways by allowing the possibility of filing systems which are not centralised provided that the information is accessible by authorized agencies; a drastic reduction in the number of items to be recorded; and a commencement date of end 2014. Dealers records are currently open to inspection by the police and we have taken the view that, combined with the recently introduced National Firearms Licensing Management System (NFLMS), the UK can accept the revised record keeping proposals.

After some discussion, provisions in the amended Directive concerning the European Firearms Pass will remain largely unchanged. Although it will be deemed to be the main document required, proposals for it to be the sole document were withdrawn. This means we will be able to continue to require shooters visiting from Member States to obtain a Visitor’s Permit prior to entering the UK. Importantly, this enables the police to attach conditions to the permit.

EP have proposed an amendment which would permit the acquisition and possession of firearms only by persons who are at least 18 years of age, except in relation to the possession of firearms for hunting and target shooting, provided that they have their parents’ permission or are under guidance of an adult with a valid firearms or hunting licence or are within a licensed training centre.

The existing Directive already prohibits the acquisition and possession of certain firearms by under-18’s except for hunting or target shooting but there is no requirement for them to be under parental/adult guidance or at a licensed training centre. We have successfully argued for the wording to be changed so that our system of Home Office approved clubs can be accommodated. We are looking to secure drafting changes which would also allow young persons to acquire firearms in certain circumstances.

13 November 2007

Letter from Vernon Coaker MP to the Chairman

Further to my letter of 13 November, I am writing to update you about further progress of the Weapons Directive.

Agreement has now been reached on a package of proposals which will be presented to the European Parliament for a vote with a view to securing first reading agreement on 28–29 November. This draft will then be put before the Justice and Home Affairs Council for agreement, on 6–7 December.

As regards the provisions in the Directive relating to criminal sanctions, we have succeeded in amending the text in the recital to read:

“In some serious cases, compliance with Articles 5 and 6 of the Protocol requires the application of criminal sanctions and confiscation of the weapons.”

We are also satisfied with the proposed wording of the related article 16 which now reads:

“Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.”

The Commission continue to argue that the recital and the article itself should be amended as follows:

“To ensure compliance with Articles 5 and 6 of the Protocol, requiring criminal sanctions and confiscation measures against the offences it lays down, Member States should lay down rules on penalties and confiscation applicable to infringements of the provisions of this Directive and ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.”
“The Member States shall, in full compliance with Articles 5 and 6 of the Protocol, lay down rules on penalties and confiscation measures applicable to infringements of this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.”

We have also secured, subject to scrutiny reservations entered by two Member States, amended wording to the EP’s proposal relating to the possession of firearms by those under 18 in relation to hunting and target shooting so that it will enable ‘acquisition except through purchase’. The conditions mentioned in my last letter—that they have their parents’ permission or are under guidance of an adult with a valid firearms or hunting licence or are within a licensed training centre—remain.

20 November 2007

Letter from the Chairman to Vernon Coaker MP

Thank you for your letters of 13 and 20 November which were considered by Sub-Committee E at its meeting on 21 November. As you are aware the Committee has taken a keen interest in the issues raised by the ECJ judgments in Cases C-17603 and C-440/05.

We are pleased to see that Article 16 has been amended to remove any reference to criminal sanctions and now uses the well-established formula that penalties must be “effective, proportionate and dissuasive”. However, the Government appear prepared to accept a reference to criminal sanctions in the Recitals to the proposed Directive. In this context we note that in her letter of 12 November (relating to Doc 8866/06, enforcement of intellectual property rights—also held under scrutiny) Bridget Prentice MP, Parliamentary Under Secretary of State, Ministry of Justice, states that Case C-440/05 should “not be regarded as authority for the generalised inclusion of criminal law obligations in First Pillar instruments that are not connected to the environment”. The present proposal to amend the Weapons Directive would not be such an instrument. Are we to conclude from your letter of 20 November that the Government are now agreed that the effective Cases C-17603 and C-440/05 is to confer an element of criminal law competence in matters falling within the EC Treaty in addition to those relating to the environment?

The Committee decided to retain the proposal under scrutiny and would welcome a detailed note from the Government setting out its conclusions as to the scope of application of Cases C-17603 and C-440/05.

22 November 2007

Letter from Vernon Coaker MP to the Chairman

Further to your letter of 22 November, I am writing to clarify your concerns about the effect of the judgments of Cases C-176/03 and C-440/05.

You refer to the reference to criminal sanctions in the recitals to the draft Directive. The Government can accept the current proposal for the recital because it amounts to no more than a neutral and non-consequential description of the pre-existing and extraneous requirements of the UN Firearms Protocol, which requires the application of criminal sanctions. We have made it clear that we cannot accept language that would imply additional criminal law obligations created by the Directive itself and the recital and Article 16 are drafted in accordance with this view.

As regards the broader implications of cases C-176/03 and C-440/05, there has as yet been only very limited discussion within the Council. The Government is therefore still considering its position. However, I can provisionally comment that in its judgment in C-440/05 the Court confirms that Community competence to legislate for criminal sanctions is limited.

The Court also clearly found that, while the Community can require Member States to criminalize conduct to protect the environment from conduct which is likely to cause particularly serious environmental harm, it cannot prescribe the nature or severity of sanctions. The Government welcomes this. Indeed it confirms the position set out in our intervention in support of the Council in that case.

The Government also provisionally considers that, as explained in Bridget Prentice’s letter on the proposed Intellectual Property Directive, although the Court annulled this Framework Decision, the judgment is not authority for including criminal law in First Pillar instruments outside the environmental sphere. Indeed, the Court was rigorous in not extending the principle established in C-176/03 any further than it absolutely had to in order to reach this decision. The judgment focuses very closely on the essential role that the instrument concerned played in combating serious environmental offences, which was also at the heart of the earlier case. In doing so, the Court avoided making any general statement of principle on whether or not the C-176/03 principle extends beyond measures that are related to the environment and it did not adopt that aspect of the Advocate General’s opinion.
As you know, the weapons Directive will be put before the Justice and Home Affairs Council on 6 and 7 December for agreement. The Government is content that all of our concerns about the measure have been met and that the factual reference in the recital and revised wording in Article 16 in no way compromise our position on the broader issue of criminal sanctions.

28 November 2007

Letter from the Chairman to Vernon Coaker MP

Thank you for your letter of 28 November which was considered by Sub-Committee E at its meeting on 5 December. We are grateful for your clarification of the Government’s position. We note that the Government take the view that the Recital in question is simply descriptive of the position under the UN Protocol and does not imply additional criminal law obligations under the Directive. We are also grateful for your provisional views on the implications of the judgment in Case C-440/05. This will be helpful in the context of a number of other measures currently held under scrutiny.

The Committee decided to clear the document from scrutiny.

6 December 2007

COOPERATION AND VERIFICATION MECHANISM: PROGRESS OF BULGARIA AND ROMANIA
(6150/08, 6161/08)

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

To accompany the recent Explanatory Memorandum covering the Interim Reports on Bulgaria and Romania’s progress under their co-operation and verification mechanism on Justice and Home Affairs (JHA) issues (FCO EM 6150/08 & 6161/08), it might be helpful if I clarify the policy implications of these reports.

The Government agrees that further progress needs to be made by Bulgaria and Romania ahead of the full monitoring reports in July 2008. We welcome both the factual rigour of the content and the tone of the Commission’s reports. They are tougher than previous assessments, the praise was cursory and the criticism was more pointed. The Government has spoken in support of the reports, and other Member States share our desire to see significant progress in time for the full reports in July.

The Government is determined to send a clear message to Bulgaria and Romania on the importance we attach to such progress and the fulfilment of the terms of the mechanism in full. To that end, we have argued for robust conclusions on this report at the next General Affairs and External Relations Council (GAERC) on 10 March. If the message cannot be delivered sufficiently strongly in this text we will instead require a formal record of the discussions on these reports be taken that fully reflect the force of the position of the UK and the many other Member States who share our views.

If, by the time of production of the full reports this summer, sufficient progress has not been made, there are sanctions available. For example, the Commission can make use of the JHA safeguard measure suspending mutual recognition of court judgements from either country. This remains a key lever on reform and the prospect of its use is real. The Government is frank with both Bulgaria and Romania about the need to make progress.

The Government is committed to delivering a rigorous, transparent and objective monitoring mechanism that will remain in place until its terms are met. This is essential to support reform in Romania and Bulgaria as well as ensuring the integrity of EU enlargement policy.

26 February 2008

COURT OF FIRST INSTANCE (CFI) (6858/08)

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

This proposal was considered by Sub-Committee E at its meeting of 2 April 2008.

The proposed amendments seem sensible and we are content to clear the proposal from scrutiny.

3 April 2008
ENFORCEMENT OF JUDGMENTS IN ABSENTIA (5213/08, 7279/08, 8372/08)

Letter from the Chairman to the Rt Hon Baroness Scotland of Asthal, Attorney General, Office for Criminal Justice Reform, Ministry of Justice

This proposal was considered by Sub-Committee E at its meeting of 5 March 2008.

We welcome this initiative which we agree will help to bring more certainty to the circumstances in which Member States may refuse to recognise and execute mutual recognition instruments. However, we note that there will have to be some further thought given to the exact terms of the proposed amendments.

We are grateful to you for your assessment of the fundamental rights position and note your view that the proposal is compliant with the European Convention of Human Rights. While we are broadly content with the proposed new provisions, we have some concerns. We note that the discretionary right to refuse to recognise a mutual recognition instrument is not available where the individual concerned was summoned in person or informed in accordance with national law via a competent representative and in due time of the scheduled date and place of the hearing and the fact that a decision may be handed down if the person does not appear. In our view, the Strasbourg Court’s case-law suggests that this may be insufficient to render the proceedings ECHR-compliant where the individual thus summoned is absent due to reasons beyond his control (e.g. Medenica v Switzerland (Application No 20491/92) judgment of 12 December 2001). The proposed amendments to the various Framework Decisions should reflect this. It may be helpful to seek the views of the Council of Europe on the draft, as in the case of the proposed Procedural Rights Framework Decision.

We note that you have launched a consultation on this proposal and look forward to hearing the results of that exercise in due course.

We would welcome an impact assessment on this proposal and are pleased to see that one will be undertaken provided that there is broad agreement in the Council to proceed with the measure. We look forward to hearing from you on the views of the Council and on the expected timetable for the completion of the impact assessment if the Council views the proposal favourably.

We have decided to retain the proposal under scrutiny and would be grateful if you would keep us informed of developments.

7 March 2008

Letter from the Rt Hon Baroness Scotland of Asthal to the Chairman

Thank you for your letter of 7 March. I am pleased that your Committee welcomes this initiative.

We have considered your proposal regarding cases where the defendant is absent for reasons beyond his control. We agree that the ECHR requires that if the defendant did not absent himself deliberately, there should be a right to retrial. The FD unpacks the concrete aspects of this principle, by requiring issuing authorities to certify that he knew of the trial, and that judgment could be imposed in his absence. However, we do not think that the circumstance of whether his absence was voluntary can be dealt with specifically in the FD as the assessment of this is largely subjective. It is difficult to see how that assessment could in practice be made by the executing authority. In our view it can only reasonably be made by the issuing authority and any requirement for them to certify that it is their opinion that he deliberately absented himself will not, we think, add much to what is implicitly there already. All our EU partners are bound by the ECHR, and Article 1 (2) of the draft FD is a reminder of that, if any is needed. I therefore do not think this is a point that the UK should press in negotiations.

I fully agree that it would be useful to have the Council of Europe’s views on the draft. I understand the Council Secretariat have sought their views on behalf of the Presidency and that they are likely to be delivered before 28 March. We understand informally that they will be favourable to the measure.

The Presidency are seeking General Agreement on this dossier at the April Council. A new text of the FD has been deposited separately and I have today signed an Explanatory Memorandum to accompany that (a copy is enclosed).

There is some urgency about moving to General Agreement if this measure is to be cleared and adopted before the Lisbon Treaty comes into force—which would require the process to be recommenced under the new provisions. I hope therefore that you may be able to clear this FD from scrutiny at your next meeting.

25 March 2008
Letter from the Chairman to the Rt Hon Baroness Scotland of Asthal

This proposal was considered by Sub-Committee E at its meeting of 2 April 2008.

We welcome the general intention of creating a more coherent overall framework. But we remain concerned about the provisions regarding certification as to whether the defendant either appeared at trial or, if not, was summoned in time to appear, and the absence from the draft of any express provision addressing whether or not the defendant’s absence was voluntary. You suggest in your letter that any assessment of such matters could in practice only reasonably be made by the issuing authority, but then refer to the ECHR and Article 1(2).

We observe that the primary thrust of the recitals (especially the new recital 4) and text of the draft is to emphasise the conclusiveness of the issuing state’s certificate. Any role of the courts of the executing state is left to inference from Article 1(2) (with its indirect reference to the ECHR), and the draft gives little guidance as to when and in what circumstances the ECHR might enable or require the executing State’s relevant authorities to look behind the certificate.

We do not think that these concerns are answered by the possibility that a person against whom a European Arrest Warrant, financial penalty or confiscation order or custodial or other sentence was executed in one State could later seek to have it set aside in the issuing State. Real hardship could in the meantime arise from the execution of the relevant decision.

Your letter agreed with us that it would be useful to have the Council of Europe’s views and you envisaged that these would be favourable. However, we note that the Council of Europe has raised similar observations to our own in its note 6706/08 dated 26 March 2008. Although the present draft Framework Decision improves on existing provisions, in bringing consistency and clarity to the grounds for non-recognition and non-execution currently set out in various EU mutual recognition measures, and to this extent we support the proposal, we believe that the Framework Decision should, at the least, make expressly clear that the conclusiveness of any certificate issued by an issuing State as well as the execution of any decision rendered in absentia are both subject to compliance with the ECHR, and that a person contending that execution of any such decision would involve breach of the ECHR could raise this objection in the executing State.

We look forward to seeing the results of the consultation and to hearing whether the Government intend to undertake a full impact assessment. How frequently are decisions in absentia reached in each of the areas covered by the Framework Decisions and what problems have arisen to date?

We have decided to retain the document 7279/08 under scrutiny, although we clear document 5213/08 as superseded. We note from your letter that the Presidency is likely to seek a general approach on this dossier at the April JHA Council. However, in light of our concerns, reinforced by the Council of Europe’s observations, we would not feel able to support a general approach which did not make explicit the role of the ECHR in the context of this Framework Decision. If the text were amended to cover these concerns, we would not consider agreement of a general approach to constitute a scrutiny override.

The proposal is retained under scrutiny.

3 April 2008

Letter from the Rt Hon Baroness Scotland to the Chairman

Thank you for your letter of 3 April.

I enclose a draft of the text of this Framework Decision3 (not printed), which I hope to agree on Friday 18 April.

The text now benefits from several additional references to the ECHR. Recital 6(2) acknowledges the right to a fair trial is guaranteed by the ECHR and Recital 11 makes clear that the discretion of Members States for transposing the grounds into national law “is particularly governed by the right to a fair trial”.

In the body of the Framework Decision, too, we find a reference in Article 1(2), via Article 6 of the TEU. Although this reference is of course indirect, the legal effect is the same as a direct reference, given that respect for ECHR rights is a prominent requirement of Article 6 TEU. New wording has also been inserted into Article 1(2), making specific reference to the right of defence.

The net effect of this new wording, I hope you would agree, is to ensure that all judicial authorities—both issuing and executing—must comply with their obligations under the ECHR; and that a person subject to a decision reached after a trial in absence could raise an objection to enforcement or recognition on that basis.

Might I also add, for the Committee’s information, that the consultation process on this Framework Decision yielded six replies which we were able to take into account at the Council. We will publish a response document shortly. I am happy to confirm that I considered the responses received and there was nothing in them that led me to believe that the terms of the Framework Decision are unacceptable.

The Consultation Paper included an Initial Impact Assessment at page 17. That initial assessment led us to conclude that a full impact assessment is unnecessary. Nothing in the consultation responses suggests otherwise. As mentioned in that initial assessment, only one of the Framework Decisions concerned is in effective operation. That is the European Arrest Warrant, and the available figures on overall cases are mentioned in the paper. There are no separate figures on trials in absence cases.

15 April 2008

Letter from the Rt Hon Baroness Scotland of Asthal to the Chairman

I am following up my letter of 16 April about developments on this Framework Decision.

As I mentioned to you in my last letter, the Presidency hoped that a General Approach would be agreed at the Council. I attended the Council and can confirm that there was indeed very strong support for the text and the excellent progress made. It also appeared that Italy could be ready to accept the text, subject to a Parliamentary Scrutiny Reserve. However, two Member States rather unexpectedly raised technical concerns which the Presidency is, I understand, looking to resolve finally through the Committee of Permanent Representatives.

I share the Presidency’s hope that this dossier can be completed within the next few weeks or at the latest at the June Council. I am enclosing a copy of the current text of the Framework Directive (not printed), for your information.

23 April 2008

EUROJUST AND THE EUROPEAN JUDICIAL NETWORK (5037/08, 5039/08, 7254/08)

Letter from the Chairman to Meg Hillier MP, Parliamentary Under Secretary of State, Home office

These proposals were considered by Sub-Committee E at its meeting of 5 March 2008. The Committee decided to hold the proposals under scrutiny. A number of points arose, not least as regards subsidiarity. In responding to the issues we raise, we would appreciate your views on their implications for subsidiarity and, in due course, how these concerns have been addressed.

PRESIDENCY INITIATIVE

We were surprised to receive these two initiatives from the Slovenian Presidency (supported by a number of Member States) given the Commission’s recent Communication on the role of Eurojust and The EJN and its intention to publish its own proposals this summer. Why have the Commission’s plans been pre-empted and to what extent have they been consulted in the preparation of these proposals? We welcome the provision of a Note to the Initiative, but the absence of an Impact Assessment is to be regretted. We have in the past drawn attention to the need for evidence-based legislation.

EUROJUST AND THE EJN

We, too, welcome the present proposals as providing an opportunity to assess how best to improve the functioning of Eurojust and the EJN, and improve synergy between them. However, it seems to us that the proposals do not resolve issues of overlap of jurisdiction between Eurojust and the EJN. We support the view that Eurojust should be responsible for improving cooperation and coordination between Member States through formal mechanisms where necessary, while the EJN should focus on providing practical support and advice at national level. We would welcome the introduction of a provision to clarify the two distinct roles.

In respect of the EJN Decision, you mention concerns regarding the Article 11 provisions requiring EJN contact points to inform Eurojust of cases falling within their (Eurojust’s) competence. What negative consequences and practical problems do you anticipate?

EMERGENCY CELL FOR COORDINATION

Clearly there is some discussion to be had as regards the proposal to establish an emergency cell for coordination (ECC). It would, in our view, be sufficient to require that each Member State delegation be contactable at all times and we share the Government’s concern at a provision to allow the ECC representative to execute an urgent request. How does the UK delegation currently deal with the execution of urgent requests?

NATIONAL MEMBERS

The new provisions in Article 9 on national members require careful examination. The minimum length of mandate and increased independence by limiting possibilities for removal seem to us to be positive developments and we would be interested to hear in more detail the nature of the Government’s concerns. As regards access to national databases, we would be grateful if you could advise us of the current level of access for national judges and prosecutors in the UK and let us have your views on the specific provisions of new Article 9(4).

POWERS FOR NATIONAL MEMBERS

The extent of any new powers for national members is a matter which is of great interest to the Committee and we would welcome your specific views on each of the new powers proposed in Article 9a(1) and (2). As regards Article 9a(2), it is clear from the drafting that the national member can only exercise the powers listed, such as the power to order search and seizure, with the agreement of the competent national authority. Presumably, in the case of the UK, such agreement would not be given. Further, Article 9a(6) provides an exemption from the requirement to endow the national member with any of the powers in Article 9a where this is prevented by constitutional rules regarding the division of powers between judges and prosecutors. What precise amendments are the Government seeking to clarify this further? Do the Government have any objection to other Member States’ national members being granted the powers in Article 9a? If a substantial number of national members acquire such powers, there is a concern that the role and focus of Eurojust may gradually shift in a direction which the UK may consider undesirable.

EUROJUST NATIONAL COORDINATION SYSTEM

We would be interested to hear what discussion there has been of the proposal for a Eurojust national coordination system (ENCS). What are the Government’s concerns here?

EXCHANGES OF INFORMATION

Your EM highlights some concerns regarding the exchange of information and we would be interested to hear the exact nature of your concerns.

DATA PROTECTION

We note your general concerns as regards data protection and suggest that the European Data Protection Supervisor (EDPS) be invited to give an opinion on the draft proposals if this has not already been done.

RELATIONS WITH PARTNERS

We welcome proposals to improve relations with partners and coordination between EU bodies. As noted above, the provisions regarding cooperation between Eurojust and EJN will require careful examination.

LIAISON MAGISTRATES

Again, cooperation with third States is to be welcomed. However, it is not clear to us who the liaison magistrate will be (will he be a member of a Member State delegation to Eurojust?) nor what exactly his role will be. We would be grateful for some further explanation.

EJN ORGANISATION OF TRAINING

You say that you have concerns about requiring EJN contact points to deliver training if this is not part of the existing national role. What are your specific concerns? It seems to us to be desirable in principle for those involved in the EJN to organise practical training at national level.
EJN Secure Telecommunications Network
We are interested by proposals to establish a secure telecommunications network. We note your concerns regarding costs and data security but as regards the latter, we consider that a secure network could improve the security of data being exchanged. The view of the EDPS would be welcome here, and we look forward to hearing how discussion on this subject progresses in the working group.

UK National Member
What progress has there been in appointing a successor to former UK National Member Mike Kennedy?
7 March 2008

Letter from Meg Hillier MP to the Chairman
I am writing in reply to the questions you raise in your letter dated 7 March 2008 regarding dossiers 5037/08 on the strengthening of Eurojust and 5039/08 on the European Judicial Network.
The Government has submitted a second Explanatory Memorandum on this subject dated 26 March 2007 on the basis of a revised text reflecting negotiations to date which should some of your observations [sic]. Negotiations are however continuing.

Presidency Initiative
The Committee asks whether these proposals pre-empted Commission plans and express regret at the lack of a full impact assessment.
The proposals were prepared by the Presidency, which was keen for modest improvements to Eurojust and the EJN to be implemented in a short timescale. We understand that they were drafted in consultation with a number of other Member States and with the Commission. The Eurojust proposal draws substantially on the Commission Communication on the role of Eurojust and the European Judicial Network (14253/07) from October 2007, which was the subject of an expert level seminar in Lisbon on 30 October 2007, at which those involved in the current initiative were present. Member States do of course have a right of initiative under the Treaty alongside the Commission. We always encourage such initiatives to include impact assessments but believe the note and EM (attached) was sufficient in this case. The Commission welcomed the proposal and has indicated that it will consider whether further amendments are still necessary in light of the Presidency’s initiative.

Link between Eurojust and the European Judicial Network (EJN)
You also seek the introduction of a provision to clarify the roles of EJN contact points and Eurojust national members.
The need to clarify the relationship between Eurojust and the EJN is well made. Requests that ought to have been routed through the EJN too often occupy time at Eurojust. Although it is the practice of the UK team to challenge the registration of inappropriate cases at Eurojust, this is not always successful. The Government will explore, during negotiation, options for providing this clarity.
You ask about potential difficulties in the EJN Decision with EJN contact points being required to inform Eurojust of cases falling within its competence. The Government believes that it is useful to inform Eurojust of cases where it might add value in co-ordinating action and resolving barriers to effective co-operation. However, it is not clear that a duty to inform Eurojust is preferable to leaving the decision on referral to the discretion of the competent authorities and we have concerns about placing this duty on EJN contact points, who are unlikely to have a complete knowledge of the case or its potential scope, and for whom this would be a substantial administrative burden.

Emergency Call for Co-ordination (ECC)
You ask about how the UK delegation currently deals with the execution of urgent requests. The UK delegation is contactable at any time by wireless email and mobile phone (Blackberry). Additionally, there is a secure, remote access facility to log on to e-mail accounts from computers when away from the office.
If an urgent request is received out of hours, a member of the UK team contacts the national members for the concerned Member State(s) to alert them to the request and to agree actions and time scales. Because Eurojust’s role is one of co-ordination, the execution of urgent requests depends on the availability of competent authorities in Member States. This clearly varies from Member State to Member State.
The Government believes that if the ECC is to ensure availability of national desks, it is welcome. It agrees with the Committee that a requirement to be contactable at all times is sufficient. Giving powers of execution to the ECC is not consistent with Eurojust’s role as a co-ordination body.

**NATIONAL MEMBERS**

The Government is now content with the revised text of Article 3 of the Eurojust Council Decision (document 7254/08) regarding the terms of posting of national members, deputies and assistants to Eurojust. These reflect current UK arrangements.

As regards access to databases, you ask what the current level of access is for national judges and prosecutors in the UK. UK prosecutors and judges do not have direct access to such databases but can request information via the police. The Government has therefore sought an amendment to clarify that access can only be in accordance with access available to domestic equivalents. We understand that the new language in Article 9 (4)a of the Eurojust Council Decision is intended to reflect this principle and we are seeking legal advice.

**POWERS FOR NATIONAL MEMBERS**

You ask for the Government’s specific views on each of the new powers proposed. These are set out below.

More generally, the Government believes that Eurojust’s prime purpose remains to strengthen coordination and cooperation, such that extended powers for national members should not be necessary.

The Government supports national members having the same powers that they would hold in an equivalent domestic position and does not have objections to other Member State’s national members having additional powers that would be available to them under their national law, provided they cannot be exercised in another Member State’s territory. The Swedish national member at Eurojust, for example, already has powers to authorise controlled deliveries in Sweden. Early indications in the working group indicate that quite a number of Member States have constitutional rules preventing them to give powers to prosecutors not exercised at national level.

You suggest that if many national members acquire the powers below, then the role and focus of Eurojust would “shift in a direction the UK may consider undesirable”. The Government does not think this is likely, at least in the shorter term and especially where the Eurojust prosecutor already has the powers proposed at a national level (as in the example above). It may be more likely if Eurojust national members acquired powers which were markedly different to those exercised domestically by national competent authorities.

**Article 9a(1)**

(1): This provision is not controversial and reflects current practice:

(a) This provision is uncontroversial, reflects current practice and the Government supports it, subject to minor drafting amendments to delete “judicial”. In the UK the majority of supplementary investigations will be undertaken by non-judicial authorities and national members should be able to approach them directly to take follow up action.

(b) The Government believes that the current wording on participation of the Eurojust member in a Joint investigation Team (JIT) strikes the right balance as JITs are underused. However, using JITs that are funded by Eurojust raises questions regarding accountability. We will press for the wording to be expanded so as to make it clear accountability for a JIT funded by Eurojust remains with the participating Member States and not with Eurojust.

(c) The Government notes that Eurojust’s involvement in Analysis Work Files (AWF) is being discussed with Europol experts.

**Article 9a(2):**

(i) The Government supports Eurojust National Members having equivalent powers to issue requests as they would have domestically in an equivalent function (so an English or Welsh Crown Prosecutor acting as Eurojust national member should have the power to issue a letter of request, but would not have the power to issue a European Arrest Warrant, which can only be issued by a judge). It will seek the necessary amendments.

(ii) & (iii) The Government does not support the provision of additional powers to national members beyond their domestic competence. National authorities should be responsible for taking forward action agreed as a result of Eurojust coordination.
Article 9a(3)

The proposed power sits uneasily with that of the Emergency Cell for Coordination, which should be able to liaise rapidly with the appropriate national authorities over both controlled deliveries and the necessary ancillary measures. The Government does not support an obligation to grant national members such a power. In England and Wales prosecutors have no role in the execution of letters of request.

Eurojust National Coordination System (ENCS)

You ask what discussion has there been regarding a National Coordination System. This has not been discussed extensively yet although during first reading the Presidency explained that the intention was to enable national contact points to communicate on a regular basis and saw the national coordination system as a long term project, which would build on already existing contacts. A number of Member States, including the UK, were concerned that the proposal as drafted might add to bureaucracy. If all that was intended was to ensure that Eurojust, the EJN and national contact points kept in regular contact, the text should be amended to make this clear.

The Government would only support a national co-ordination system if there is a clear added value and if the proposal would not impose a large extra workload on national correspondents. An alternative would be to introduce a non-binding responsibility to inform Eurojust of any cases with which Eurojust is considered to be better able to deal.

Exchanges of Information

The Government sees some merit in involving Eurojust in cases of serious cross-border crime at an earlier stage than usually happens. We will therefore seek redrafting to make the provisions more proportionate concerning the quantity of information to be provided, as well as to include an explicit reference to avoiding duplication with Europol.

Data Protection

We welcome your suggestion of seeking the views of the European Data Protection Supervisor on the data protection aspects of the Eurojust Council Decision and the EJN secure telecommunications network. We will raise this with the Presidency. We shall also mention this at the next opportunity within the Working Group.

Liaison Magistrates

You ask who a liaison magistrate would be (for example a member of a Member State delegation to Eurojust) and for clarification about the role of a liaison magistrate. These are issues that have been the subject of some debate within the working group, with delegations raising similar queries. The answer to the first question appears to be in the proposed Article 27a (1a) (document 7254/08) which provides that “The liaison magistrate...shall be a deputy, assistant, national member of Eurojust or a magistrate seconded to Eurojust under Article 30(2)” . Following a discussion in the working group it seems clear that liaison magistrates would therefore be drawn from existing members of Member State delegations. In turn, Member States would then be invited to nominate a replacement national member, deputy or assistant to fill the vacated post, not least since it seems clear that one person could not fulfil both roles in parallel.

The precise tasks of a Eurojust liaison magistrate have yet to be clarified in negotiations but we would anticipate that they would be similar to the roles of existing national liaison magistrates, such as those the UK has posted to the USA, Pakistan and France. The distinctive nature of the Eurojust liaison magistrate posting would be its multilateral rather than bilateral nature. In the sphere of judicial co-operation, it would follow the model of pooling EU liaison officer resources in third countries, which is seen as sensible and efficient. Provisions to resolve possible frictions over the use of the liaison magistrate are needed, especially where it seems to be envisaged that the liaison magistrate could act both for Eurojust and for competent authorities of a Member State (Article 27a(2)).

Liaison magistrates should obviously be posted in strategic countries and you will note in the most recent text a proposal to grant the Council a role in deciding which countries should be a priority. The Government believes that a Eurojust liaison magistrate could act as an important link between third States and the EU in, for example, action to disrupt organised crime activity. It is clear that many of the challenges facing the EU come from outside its borders and it is therefore in our interests to work with third States to tackle and prevent serious cross-border crime.
EJN ORGANISATION OF TRAINING

You ask what concerns we have about requiring EJN contact points to deliver training. We support the objective of improving training on judicial co-operation but EJN contact points are full time practitioners rather than trainers and do not necessarily have the capacity nor the resources to organise training. In our view there should be discretion for Member States to decide the most appropriate way to deliver training locally, drawing on EJN expertise as appropriate.

EJN SECURE TELECOMMUNICATIONS NETWORK

You express interest in proposals for a secure telecommunications network and considered that this could improve security for the exchange of data. I agree that in principle we should encourage initiatives to improve the security of information exchange. We share your interest in learning more details of how this would be achieved in practice and whether it would provide a practical and cost effective system of communication. We will pursue this when it is considered in the working group (you will see from the latest text that discussion of the topic has been reserved for a later date).

UK NATIONAL MEMBER

The post of the UK national member has now been advertised and interviews are planned for mid to late April. In the meantime, the UK is represented by the Deputy National Member, who also has a full time UK assistant. We will let the Committee know the outcome of the process when it is complete.

Negotiations on the drafts are currently underway in the Council working group on Cooperation in Criminal Matters and there is a sense that delegations wish to see them adopted this year. This will involve a fast pace negotiation, possibly aiming for agreement at the June Justice and Home Affairs Council. In the meantime, specific Articles will be presented to the April JHA Council for consideration.

27 March 2008

Letter from the Rt Hon Tony McNulty MP, Minister of State, Home Office, to the Chairman

I am writing to update you on developments with regards to the draft Council Decision on the strengthening of Eurojust (7254/08) in advance of the JHA Council on 18 April.

The current document for the JHA Council invites delegations to endorse the text of Articles 2, 7, 9, 10 and 30 of the Council Decision on Eurojust “subject to such adjustment as may be necessary in the light of further discussions on related Articles of the proposal”. The Committee may wish to be aware that the text of Article 9 differs from that in the recent consolidated text (7254/08) which was deposited with a EM of 26 March. On a proposal from the UK it now reads, with the deletion on paragraph 4a:

“4. In order to meet Eurojust’s objectives, the national member shall have (. . .) at least equivalent access to or (. . .) be able to obtain the information contained in the following types of (. . .) registers (. . .) of his or her Member State as would be available to him or her in his or her role as a prosecutor, judge or police officer, whichever is applicable, at national level:

(i) criminal records;
(ii) registers of arrested persons;
(iii) investigation registers;
(iv) DNA registers;
(v) other registers of his Member State where he deems this information necessary for him to be able to fulfil his tasks.”

I look forward to receiving your views on the latest consolidated text and this amendment and will of course provide the usual report of the Council discussion. In the meantime, I wanted to let the Committee know that at the Council I plan to maintain the UK’s current substantive reserve on Article 7 (which remains unchanged from that deposited) as well as the UK’s parliamentary scrutiny reserve on the text as a whole.

16 April 2008
EUROPEAN AGENCIES: THE WAY FORWARD (7972/08)

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

You will recall our correspondence on the issue of European Regulatory Agencies. I am pleased to update you that, on 1 April, the Commission issued a Communication to the European Parliament and the Council, entitled “European Agencies—The Way Forward”. I attach an Explanatory Memorandum (not printed) for your Committee’s consideration.

With this new Communication, the Commission aims to address the lack of progress made with the 2005 Inter-Institutional Agreement (IIA). It intends to withdraw the IIA and instead invite the European Parliament and the Council of Ministers to join in establishing a new inter-institutional group to establish ground rules for all agencies. It also proposes to evaluate all existing regulatory agencies by 2009-2010, and refrain from establishing any new ones until this evaluation is concluded.

We will keep the Committee informed of any future developments.

24 April 2008

EUROPEAN ARREST WARRANT: FRAMEWORK DECISION (11788/07)

Letter from Meg Hillier MP, Parliamentary Under Secretary of State, Home Office, to the Chairman


Your principal concern was the suggestion in the report that the UK does not respect time limits. The time limits specified in Article 17 of the Framework Decision are that in cases where the requested person consents to his surrender, the final decision on the execution of the EAW should be taken within 10 days of consent being given. In contested cases, the final decision should be taken within 60 days. These time limits may be exceeded by a further 30 days in specific cases, but in such cases the executing authority must inform the issuing authority of the reasons for the delay.

In 2005, where the UK was the Member State executing the EAW, cases took an average of 28 days to complete when a person did not contest their surrender and 65 days in cases where the surrender was contested. This compares with average times across the EU of 11 days in cases where the person consents to their surrender and 43 days in contested cases.

As you know, the administration of EAW work in the UK is carried out by the Serious Organised Crime Agency (SOCA). The length of time taken for surrender in both consent and contested cases is primarily a judicial issue rather than a process that SOCA can influence or change.

Historically duty solicitors would not advise clients to consent on the first hearing (i.e. day one). The hearing would then be listed for a date 21 days after the first hearing and at the second appearance the solicitors would give consent. After consent the 10 day period for removal would be ordered. This would bring most surrenders to the average 28 day period specified. The courts service recently held a training seminar for duty solicitors to explain the extradition process more clearly to them. The seminar has encouraged duty solicitors, in cases where consent is appropriate, to advise their clients to consent to extradition on the first hearing. We hope that this will assist in reducing the time taken in these uncontested cases.

Contested cases have higher than average surrender periods largely due to adjournments, appeals and hearing dates, and these periods may get longer on current estimates. In the first year the statistical data was recorded there were hardly any appeals (2004/05). In late 2005 early stages of appeals began to increase but there were still no long running cases. Presently there are several long running appeals cases (three years and more) that will continue to skew averages.

In both consent and contested cases, once extradition has been ordered SOCA agrees with the Metropolitan Police Extradition Unit (MPEU) and the requesting state a suitable date for removal–collection.

In some cases, requests from the courts for additional clarification of the extradition request can lengthen the process. In these cases SOCA will approach the issuing judicial authority in the requesting state with a request for more detail. SOCA has streamlined its processes where possible; for example requests for additional data from Poland are now sent with a Polish fax header and cover sheet to alert Polish officials to the urgency of the request.

You referred to the work of our working group on time limits. This working group was originally set up following the terror attacks in London on 7 July 2005 as part of the then Prime Minister’s 12 point plan to strengthen UK measures to deal with terrorism. One of the measures was to consult on the setting of time-limits in the extradition of terrorist suspects. The Home Office set up a tri-lateral working group with the Crown Prosecution Service (CPS) and the then Department of Constitutional Affairs (DCA) as a consequence. It was quickly realised that setting formal time-limits on extradition cases could have the perverse effect of causing terrorists wanted for extradition to be released simply because an administrative time-limit had expired. A protocol imposing time targets in extraditions involving terrorist suspects was devised as the next best alternative. The working group also examined various obstacles to the achievement of these targets and considered solutions. The initial job of the trilateral group has largely been completed, in that there is now a much better handle on terrorist cases, and many of the procedural improvements the meetings have identified are well on the way to being implemented. For example;

— Courts are being more robust in resisting applications for lengthy adjournments unless there is a good reason for it.
— Significant progress is also being made in increasing court, prosecutor and counsel resources in extradition so that delays become less endemic in the system.
— Materials on requesting states’ law and human rights records are being assembled to help defend against challenges on these matters.
— Training of judges in these matters is being arranged by the Judicial Studies Board.

(We expect that these improvements will assist in reducing the delays in all extradition cases, not just terrorist ones.)

The working group has recently altered its focus in the light of the implementation of the second generation Schengen Information System (“SIS2”) and e borders. As identified during the House of Lords enquiry into SIS2 at the end of last year, these developments may result in an increase in extradition casework. At its last meeting on 25 September it was also recognised that there was a need to improve the UK’s record of performance on incoming extradition cases: if an increase in casework led to a worsening in the UK’s caseworking performance this might have an effect on other countries’ co-operation with the UK. We have therefore upgraded the seniority of officials on the working group and changed its terms of reference. The revised terms of reference are;

— To ascertain the likely increase in extradition casework over the next five years;
— To predict the likely effect of any increases on each stakeholder organisation and on the UK’s reputation with her extradition partners abroad;
— To identify changes that will need to be made to cope with these increases and to keep Ministers closely involved;
— To continue to monitor terrorist cases in future by reviewing an updated terrorist case check list at every meeting.

Separately, the CPS are fully engaged with a programme through the Joint Operational Authority to ensure that working practices and expected demands are agreed in order that the CPS can make bids in their budgeting for adequate resources. CPS are aware of the potential demand within England and Wales. Similar discussions through the JOA will take place with the relevant agencies in Scotland and Northern Ireland.

Lastly, you referred to the need to protect the rights of the person whose extradition is requested, and urged the Government to encourage the Council to give full considerations to human rights concerns during early negotiations, so that there is no need to further address such concerns at the transposition stage. I fully accept that premise, and officials will continue to work to achieve this in negotiations.

28 November 2007

Letter from the Chairman to Meg Hillier MP

Thank you for your letter of 28 November which was considered by Sub-Committee E at its meeting of 12 December 2007.

We are grateful to you for providing details of the reasons for delays in executing EAWs in the UK. Given that delays arise as a result of appeal procedures and, in some cases, because of the need for clarification of some aspect of the European Arrest Warrant from the issuing authority, we do not accept the Commission’s criticism of the UK for failing to respect the time limits in the Framework Decision. Ensuring that time limits are met should never come at the expense of safeguarding the fundamental rights of individuals.
There is, we believe, an inherent problem in the Framework Decision imposing a time limit of 60 days in contested cases. This will need to be addressed in any review of the EAW legislation as will likely be required following the entry into force of the Reform Treaty.

We welcome your commitment to early consideration of human rights issues in the negotiation of EU legislation. Had this been done in the present case, the potential problems might have been identified in advance and a suitable solution, reflecting both the political climate and practical realities, might have been found.

The Committee has decided to release the Report from scrutiny.

13 December 2007

EUROPEAN PATENT SYSTEM (8302/07)

Letter from Lord Triesman of Tottenham, Parliamentary Under Secretary of State for Intellectual Property and Quality, Department for Innovation, Universities and Skills, to the Chairman

In your letter of 12 July 2007, you asked to be kept updated on discussions concerning the Commission’s April 2007 Communication “Enhancing the Patent System in Europe”. I am pleased to be able to update you on the discussions which took place under the Portuguese Presidency, and prospects for 2008.

The Presidency held expert working groups in July, October and November 2007, and a period of consultation with Member States during September. In October, the Presidency tabled a working document which set out for the first time a proposed structure for the European Patent Court. This was amended and discussed at the November working group, and was annexed to the Presidency’s Progress Report presented to the Competitiveness Council on 22 November.

From the outset, it has been the UK’s objective that a European Patent Court must be efficient and affordable, and deliver consistent, high-quality judgments. The working document contains a number of elements which could enable the Court to meet this objective, but these need further development. There is also significant disagreement among the Member States on a number of issues, notably the proposal to separate infringement and invalidity actions, raised in the same case, between different court divisions, and language issues. There is also concern over the possibility that a future proposal on a European Patent Court could be tied to a Community patent proposal.

We understand that the Commission wishes to present a proposal for a European Patent Court next year, either during the Slovenian Presidency, or early in the French Presidency. There are significant issues still to be resolved, but broad consensus has formed on a number of issues and further progress could be made. The UK will be engaging positively with the Commission and Presidencies. I shall continue to keep you updated on developments.

16 December 2007

Letter from the Chairman to Lord Triesman of Tottenham

Thank you for your letter of 16 December which was considered by Sub-Committee E at its meeting on 16 January. The Committee decided to clear the proposal from scrutiny.

We are grateful for your update and note that the Government will be engaging positively with the aim of enabling the outstanding issues to be resolved. We should be grateful if you will keep us informed of the progress of discussion of the Commission’s ideas, and look forward to receiving the expected formal proposal later in the year.

17 January 2008

EUROPEAN REGULATORY AGENCIES (7032/05)

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

Thank you for your letter of 31 October which was considered by Sub-Committee E at its meeting on 21 November. It is helpful to have your confirmation that there has been no further progress on this dossier. You also confirm that the proposal would not be affected by the Reform Treaty.

The Committee decided to retain the draft Agreement under scrutiny. We would be grateful if in due course (and in any event not later than 31 January 2008) you would let us know whether the Slovenian Presidency intends to take the issue forward.

22 November 2007

Letter from Jim Murphy MP to the Chairman

I am writing in response to your letter of 22 November 2007 concerning the Inter-Institutional Agreement (IIA) on the operating framework for the European Regulatory Agencies.

I understand that the Slovenian Presidency does not intend to take this issue forward. Given the sceptical position France took when the matter was last discussed during Germany’s EU Presidency, I would not anticipate this being a priority for the forthcoming French EU Presidency either.

We will keep the Committee informed of any future developments.

24 January 2008

Letter from the Chairman to Jim Murphy MP

Thank you for your letter of 24 January which was considered by Sub-Committee E at its meeting on 5 March. We are grateful for your update.

Having regard to the prolonged period of inactivity on this dossier, and since it seems highly unlikely that there will be any progress for at least another year, the Committee decided to clear this proposal from scrutiny. We would, however, expect a fresh EM to be submitted should work on this proposal be revived.

7 March 2008

EUROPEAN STATISTICS (14094/07)

Letter from the Chairman to Angela Eagle MP, Exchequer Secretary, HM Treasury

This proposal was considered by Sub-Committee E at its meeting of 28 November 2007.

We note that you broadly support the proposed Regulation. We, too, welcome the proposal to simplify and revise the existing basic legal framework of European statistics in order to provide better support to the production of comparable statistics across the EU and thereby facilitate the formulation of EU-level policy. We also agree that some of the detail of the proposal may require further attention.

Article 11 provides for the adoption of the European Statistical Programme. Are the Government content with the procedure outlined for the adoption of the Programme? Are they content with the content of the proposed Programme? We consider the Programme important to provide an indication to National Statistical Authorities among others of what statistics will be required, as well as providing the legal framework for the collection of statistics. On a related matter, you say that the Government are satisfied with the provisions on temporary direct statistical action. Are you satisfied that Article 15 will not impose an excessive burden on National Statistical Institutes?

You say that “dissemination, access and disclosure control are adequately provided for”. Is Article 18 sufficiently clear as to when individual data can be disseminated in the form of a public use file? What is the UK’s approach to “anonymising” data? Do other Member States adopt a similar approach?

Your EM indicates that the Government are reserving their opinion on some of the features of the statistical framework proposed until an adequate explanatory note is provided. You appear to suggest that this note should be provided by “the Task Force that developed the model”. We understand from page five of the Commission’s EM that the proposal builds on the results of several Task Forces. What body do you consider ought to prepare a further note, and is a further note expected?

Finally, we note your statement that the proposal is consistent with the Human Rights Act. The proposal raises important issues of data protection and privacy. Might Articles 19 to 21 and 26 involve risks of excessive disclosure of personal information? We would be grateful for a more detailed analysis of the human rights
implications of this proposal, both in terms of the Act and the wider European human rights framework. This should include your reasons for reaching the conclusion that the proposal is consistent with the Act and your specific comments on Chapter V of the proposal.

We have decided to retain the proposal under scrutiny.

29 November 2007

Letter from Angela Eagle MP to the Chairman

Thank you for your letter of 29 November 2007. You raise a number of questions about the proposal for a regulation of the European Parliament and of the Council on European Statistics. I have addressed each of your questions in turn, below.

**Article 11 Provides for the Adoption of the European Statistical Programme. Are the Government Content with the Procedure Outlined for the Adoption of the Programme? Are they Content with the Content of the Proposed Programme?**

The European Statistical Programme will be adopted in the same way as at present, by co-decision of the European Council and Parliament. This manner of adoption gives the Programme legal force, commits the Commission (Eurostat) and Member States to its delivery (according to their spheres of competence), and enables the release of funds to deliver the programme.

Under proposed Article 4, the ESS Partnership Group will examine the Programme and related developments, methods, priorities and progress. The composition of the ESS PG is set out in Article 4(2). The ESS PG therefore has a substantial statutory role in scrutinising the Programme before adoption, and for providing the professional leadership for its delivery after adoption.

Where the Commission (Eurostat) believe that the delivery of the Programme requires a direct statistical action by the Commission (as opposed to the default position of actions by Member States) the action must be agreed by a comitology procedure. The ESS Committee is the comitology committee for the ESS (Article 27) and the Article 15 provision is one of a number of areas in the new framework where detailed issues are resolved in this way.

The Programme consists of the statistics considered necessary for performance of the activities of the European Community. The Select Committee is correct to say that this becomes an important indication to NSIs of the future statistical needs of Europe. Member States typically prefer that European Statistics are founded upon national aggregates, rather than by direct statistical actions by Eurostat. To remain so it will be necessary for the national programmes for statistics to be supportive of the requirements of the Programme at the community level. This is already the case (for example, in the design of labour market and household surveys and national accounts). Therefore the Programme does indeed shape important features of the national statistical programme for the UK and other Member States, such as the burden imposed on UK statistics. This makes the scrutiny and professional leadership role of the ESS PG very important. The proposal replicates the current role of the Statistical Programme Committee (which has been considered successful) but builds it into the single modern governance framework for the ESS

**Are you Satisfied that Article 15 will not Impose an Excessive Burden on National Statistical Institutes?**

Article 15 makes legal provision for the Commission (Eurostat) to directly compile existing data in Member States, or undertake the direct collection of data within Member States. The provision is most relevant for those Member States with developing national statistical systems. Any direct statistical action must be authorised by comitology decisions of the ESS Committee. The action must be directly related to a requirement of the European Statistical Programme. If the UK is obliged under such a Article 15 procedure to compile or collect data there may be a burden equivalent to, but perhaps different in practice from, meeting the requirements of the Programme by the usual means. It is for the UK and other Member States to endeavour to meet the requirements of the European Statistical Programme by their preferred methods of data Collection, but if the Member States fail to do so then Article 15 provides the means by which the Commission can seek authorisation for direct statistical action.

In short, the burdens on the UK originate from the Programme itself. Therefore the provisions of Article 15 do not of themselves impose any extra burden on the UK but rather provides a means by which the ESS can lawfully provide for the delivery of the agreed Programme.
Is Article 18 Sufficiently Clear as to When Individual Data Can be Disseminated in the Form of a Public Use File? What is the UK’s Approach to “Anonymising” Data? Do other Member States Adopt a Similar Approach?

Individual data used to produce a European Statistic can be disseminated as a public use file only when it is no longer ‘confidential data’, as defined in Article 3. This requires that data subjects can not be identified, directly or indirectly, taking into account all relevant means that might reasonably be used by a third party to identify the data subject. This is a standard for anonymisation that is equivalent to, or even exceeds, the obligations to confidentiality in the Statistics and Registration Service Act (2007).

The particular rules and measures for protecting confidentiality in disseminated European Statistics, datasets for scientific use, and public use files, are determined by the ESS Committee through the comitology procedure. This replicates the current arrangements whereby these comitology decisions are made by the Committee on Statistical Confidentiality.

The UK statistical system has a sophisticated approach to statistical anonymisation and is recognised by its peers as having a leading role in Europe in developing world class methods for both confidentiality protection and for providing access to data for research purposes. The peer review process within the ESS has found that the UK fully complies with all the requirements of the European Code of Practice in this area. The peer review report of the UK statistical system will soon be published by the Commission.

We understand from page five of the Commission’s EM that the Proposal builds on the results of several task forces. What body do you consider ought to prepare a further note, and is a further note expected?

It is for the Commission (Eurostat) to produce any further explanation for the draft Articles for the Proposal. Our preference would be for the Commission to constitute an Expert Group to prepare on behalf of the Commission, and under its chairmanship, a text that explains the intention of each Article. This text should be provided to the Council Presidency for circulation to the Working Group for this proposal.

The Proposal Raises Important Issues of Data Protection and Privacy. Might Articles 19 to 21 and 26 Involve Risks of Excessive Disclosure of Personal Information?

We would be grateful for a more detailed analysis of the Human Rights implications of this Proposal, both in terms of the Act and the wider European Human Rights Framework. This should include your reasons for reaching the conclusion that the Proposal is consistent with the Act and your specific comments on Chapter V of the Proposal.

Article 8 of the Convention on Human Rights requires that any interference with the right to a private and family life must be in accordance with the law and necessary in a democratic society. The proposal can be considered consistent with this right on the grounds that:

— it refers only to European Statistics, being those statistics developed, produced and disseminated in accordance with the Decision of Council and European Parliament on the European Statistical Programme, within the legal and regulatory framework for those European Statistics.

— further, the proposal harmonises the existing legal framework that ensures the Programme minimises intrusions into respondent privacy yet balances that intrusion with the need for statistics that allow the Community and Member States to develop and pursue policies and administrative actions upholding the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

— further, the proposal requires that any transmission or exchange of data is limited only to that necessary for the statistics in the European Statistical Programme. It will not be lawful under the proposal to exchange any data that is not necessary for that purpose.

— As is the case of a national statistical system, given the increasing demands for statistics from national and European government the alternative to exchanging existing data is to initiate additional direct statistical inquiries. This would increase the respondent burden, but would also have the effect of increasing the amount of data held by the statistical system about the citizens and enterprises of Europe.

— The ESS PG, under Article 3(d), shall have the role of scrutinising the measures for statistical confidentiality of exchanged data. This will include the standards for maintaining the security and privacy of statistical records held by Eurostat.
— Under the Statistics and Registration Service Act 2007 the Statistics Board will only be able to exchange confidential data with the Commission (Eurostat) where there is an obligation in Community law to do so. Where there is such a Community obligation the relevant sectoral Regulation when enacted will provide the ‘in accordance with the law’ and ‘necessity’ requirements of the Convention right. Once again, the role of the ESS PG in the scrutiny of the sectoral regulations, and the European Statistical Programme that makes them necessary, is important.

The Commission have sought the formal opinion of the European Data Protection Supervisor on the compliance of this proposal with the European Data Protection Directive.

14 January 2008

Letter from the Chairman to Angela Eagle MP

Thank you for your letter of 14 January which was considered by Sub-Committee E at its meeting of 23 January 2008.

We are grateful to you for the helpful explanations you provide. In particular we welcome your detailed comments on the human rights position. We look forward to seeing the formal opinion of the European Data Protection Supervisor.

We note your comments on the need for a further explanatory note. Is it expected that the Commission will establish an expert group as you suggest?

We have decided to retain the proposal under scrutiny and will consider this matter again once we have had sight of the further explanatory note and the EDPS opinion.

24 January 2008

EUROPEAN SUPERVISION ORDER (ESO) IN PRE-TRIAL PROCEDURES (12367/06, 15821/07)

Letter from the Chairman to the Rt Hon Baroness Scotland of Asthal, Attorney General, Ministry of Justice

As you know, the Committee published its Report on the above proposal (European Supervision Order, 31st Report of Session 2006–07, HL Paper 145) in July 2007 and recommended it for debate. Following publication, it became apparent that Member States were unhappy with aspects of the Commission’s proposal and that an amended proposal would be published.

In late October 2007, you responded to our Report. In your letter, you did not outline developments in relation to the proposal but simply responded to the points we raised in our Report. We have heard nothing from the Government on this proposal since receiving your letter and have been deferring the proposed debate on the basis that it would be preferable to debate once we have had a chance to consider the revised draft of the proposal. We did, however, receive a letter from the Commission to the effect that they agreed, to a large extent, with our analysis.

We were therefore surprised to learn that an amended proposal had been prepared by the Portuguese Presidency and was discussed at a Council working group on 11 December 2007. We understand that a further refined version of the text was circulated to delegations on 13 December following agreement in the working group that the text constituted a good basis for further discussions. We are not aware of any further discussions in the working group.

It is clear in the Cabinet Office Guidance that we should have been promptly informed about the new draft on the ESO once it had been published, especially given that the proposal was one on which we had reported, and that it remains under scrutiny as we are currently awaiting a debate. We consider it unacceptable that some three months later, we have still received no communication from the Government on this matter. Please let us have the latest amended text under cover of a supplementary EM as soon as possible, and an explanation of why we were not advised of developments earlier.

7 March 2008
Letter from the Chairman to the Rt Hon Baroness Scotland of Asthal

This proposal was considered by Sub-Committee E at its meeting of 2 April 2008.

We welcome the revised structure of the new draft proposal which we consider brings some clarity as regards both the objective and the mechanism of the new ESO procedure. However, we consider that there are a number of issues which will have to be addressed, and we outline them below.

**Fundamental Rights**

We note that the new draft gives greater prominence to the question of fundamental rights and we consider this to be a positive development. However, as we have recently indicated in the context of the *in absentia* proposal, we consider that there is a need to address and resolve apparent conflicts between EU Framework Decisions and the ECHR. We would support the inclusion in the Framework Decision of a “safeguard clause” spelling out that Member States’ relevant authorities are required to ensure that the ECHR is respected and may depart from the provisions of the Framework Decision where necessary to achieve this aim. We would welcome your views.

In your response to our recent Report on the ESO (31st Report of 2006–07, HL Paper 145), you agreed to consider further the suggestion that the Council of Europe be consulted on this proposal. What are your conclusions?

**Deadlines**

We welcome the introduction of deadlines in the revised draft. However, it is not clear to us why Article 9 refers only to grounds for non-recognition and execution in Article 11 when Article 12 also provides grounds for non-recognition and execution.

**Dual Criminality**

It is disappointing to see that, notwithstanding the recommendation at paragraph 125 of our Report and the overwhelming evidence of witnesses in our inquiry, the absence of dual criminality (with the exception of the list of 32 offences) has been introduced into the proposal as a possible ground for non-recognition and execution of an ESO. As we made clear in our Report, unlike in the case of the EAW, in the present case such a provision operates to the suspect’s disadvantage. What has prompted this change? Will the Government provide assurances that it will not allow absence of dual criminality as a possible ground for non-recognition and execution in the UK, as permitted under Article 11(3) of the proposal?

**Roles of Issuing and Executing States**

The Committee criticised the original Commission proposal for failing to address the issue of how to establish, in a contested case, whether or not there has been a breach. In the Committee’s view, this should be a question for the executing State, although responsibility would remain with the issuing State as regards the consequences of any breach established. We note that the new proposal similarly avoids this question, although a drafting amendment obliges the executing State to forward to the issuing State a finding that there has been a breach or “any other finding which could result in the revocation of the supervision order”. It is not clear if this is intended to relieve executing authorities of the responsibility for deciding whether particular conduct actually breaches the ESO. We consider the issue of establishing a breach to be crucial to the ESO mechanism, and we are unable to understand why Member States seem so reluctant to address it in a clear way. How, in your view, is a breach of the ESO to be established under the current proposal and do you consider the provisions to be adequate?

The new draft does not include any provision regarding the powers (e.g. the power of arrest) of the executing State in cases of actual or anticipated breaches of an ESO. Nor does it enable executing States to deal themselves with minor breaches of an ESO rather than referring these back to the issuing State for consideration. We recall that in your response to our Report you supported our recommendation that such powers be provided for in the Framework Decision. Have you raised these issues in the working group and what has been the reaction of other Member States?

We agree that adequate consultation between issuing and executing authorities will be important. In this respect, we welcome the agreed list of bail measures, which should limit the bureaucracy and time involved in agreeing conditions, but note that the detail of the conditions will still have to be worked out between the two Member States involved. We would hope that national authorities would make full use of the provision in Article 18 which envisages consultation with a view to ensuring the smooth and efficient monitoring of the supervision measures.
Surrender Mechanism

We note that the new draft replaces an ESO-specific surrender mechanism with the EAW. The Committee did not comment in its Report on whether an EAW would be more appropriate but we agree that it makes sense in principle to make use of existing instruments rather than creating competing procedures. However, it seems clear that this aspect of the proposal will require considerable further thought. The exceptions to the EAW procedure set out in Article 17(2) of the revised proposal, which appear to be an attempt to marry the two different proposals together, are unclear and do not appear adequate to achieve the intended results. We look forward to seeing amended drafting following discussion of this article in the working group.

Impact on Domestic Bail Laws and Processes

In your EM, you raise concerns regarding the impact of the proposal on domestic bail laws and processes. We would be grateful for more details regarding the nature of your concerns.

Adoption

Is it anticipated that agreement on this proposal will be reached prior to the entry into force of the Treaty of Lisbon?

We have decided to retain the proposal under scrutiny.

24 April 2008

FAMILY LAW: REFORM TREATY

Letter from the Rt Hon Jack Straw MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice, to the Chairman

When I appeared before Sub-Committee E on 16 January 2008 to give evidence on the Reform Treaty, I offered the Committee a memorandum on the position of the UK with respect to the legislative procedures relating to EU family law measures.

I am pleased to enclose the memorandum.

24 March 2008

ANNEX A

FAMILY LAW MATTERS UNDER TITLE IV OF THE EC TREATY

1. The House of Lords Select Committee on the European Union has asked for a memorandum setting out the Government’s view of the distinction drawn in Article 67 of the EC Treaty between the generality of measures in the field of judicial co-operation in civil matters referred to in Article 65 and, within that group of measures, those which relate to family law.

2. No guidance is given in Title IV as to what is meant by a family law measure, but it is clear that the term covers measures in the following areas where Council Regulations have either been adopted or have been proposed by the Commission and are currently under negotiation:

   — parental responsibility, which includes in particular jurisdiction and the recognition and enforcement of judgments relating to the residence of, and contact with, a child (EC Regulation 2201/2003)
   — jurisdiction and the recognition of judgments relating to divorce, nullity and judicial separation (EC Regulation 2201/2003)
   — choice of law in relation to divorce (draft Regulation proposed in 2006 and still under negotiation)
   — maintenance obligations relating to family relationships (draft Regulation proposed in 2006 and still under negotiation).

3. If it is decided that a particular measure is a family law matter that has two important procedural consequences. First, it can only be adopted in the Council by the unanimous agreement of the Member States, and not merely on the basis of a qualified majority, as is the case with other measures in the field of civil judicial co-operation. Secondly, the Council need only consult the European Parliament about it. This contrasts with other measures in the field of civil judicial co-operation where the co-decision procedure operates.

4. In assessing whether a particular proposed measure should properly be categorised as a family law matter, it is necessary to have regard to all its aspects. If the primary aspects can properly be regarded as falling within that category, then the Commission and the Member States are likely to regard the proposed measure as a
whole as a family law matter. This will be the case notwithstanding that it may contain some aspects that cannot be categorised in that way.

5. However, in other situations, for example where the non-family law aspects of a proposal constitute a significant proportion of it, either in terms of their number or their importance in relation to the proposal as a whole, then the issue will be more difficult to determine. Each case will need to be carefully assessed in terms of the particular proposal brought forward by the Commission.

6. A clear example of the situation where the family law element in a Regulation does not represent the primary component of the whole is the so-called Brussels I Regulation (44-2001), which deals with maintenance, but also deals much more broadly with civil and commercial matters. The former subject matter constitutes only a comparatively small part of the whole area within the scope of the instrument. For this reason it is most unlikely that that instrument would be now categorised as a family law matter under Article 67 (the distinction between family and other measures of civil judicial co-operation was introduced by the Treaty of Nice which was not in force when the Brussels I Regulation was adopted).

7. A more recent example is the draft Directive on mediation that will be adopted shortly. This was proposed after the introduction into Title IV of the distinction between the generality of civil law measures and, within that broad category, family law measures. The Council and the Commission have agreed that this instrument should be taken forward as a general civil law measure, notwithstanding that family mediation falls within its scope. This decision reflects the fact that its primary purpose lies in the general area of civil and commercial matters.

8. The Commission makes an initial assessment as to whether a proposed measure should be regarded as a matter of family law when it formally publishes it, thereby starting negotiations within the Council. The final decision is taken by the Council of Ministers, although it is open to the Court of Justice to review that decision. No proceedings in relation to such an issue have as yet been brought before the Court, but it seems likely that the Court would allow the Council some margin of appreciation in coming to its conclusion. In the light of this it would only be likely to strike down a Council decision if it considered that that decision was clearly incorrect.

9. Turning to the Commission’s forthcoming proposal on succession and wills, the Government considers that it would be inappropriate to take a position now on whether this constitutes a family law matter. This should only be done after there has been an opportunity to consider the published proposal itself. A careful and detailed assessment of all aspects of that proposal will be necessary before any conclusion can properly be reached, and this can only be done after publication.

10. It is possible that there may be differing views among the Member States as to whether the Commission’s proposal in the area of succession and wills properly constitutes a family law matter. In some Member States the freedom of a testator to dispose of his or her property on death as he or she sees fit is limited and to a great extent the testator’s property must automatically pass to the members of his or her family. In those countries it may well be concluded that a proposal in this area should constitute a family law matter. The issue might well be viewed differently in those countries with a different legal tradition where the principle of testamentary freedom has greater importance.

11. It may also be a relevant consideration that a family law categorisation of a particular proposal would result in a requirement of unanimity before its adoption by the Council. This could be seen as important in those countries where there is an assessment that the proposed measure, as put forward by the Commission, could have undesirable consequences, particularly in terms of undermining aspects of the national substantive laws or procedures in those countries.

12. Turning to the proposals relating to family law measures in the Lisbon Treaty, it should be noted that the procedures currently laid down in Article 67 (see paragraph 3 above) are replicated in Article 81 (3) (first indent). The Government welcomes the retention of these procedures.

13. A significant new safeguard is laid down in relation to the passerelle clause. This clause originated in Article 67(2) (second indent) of the Treaty of Amsterdam. Under the Treaty of Lisbon it is to be found in Article 81(3) (second indent). It enables the Council to decide, on the basis of unanimity, following a proposal from the Commission, that certain aspects of family law with cross-border implications should in future be subject to legislation which may be adopted in accordance with the ordinary legislative procedure, that is on the basis of a vote by a qualified majority of the Member States and with the co-decision of the European Parliament, rather than with the unanimous agreement of the Member States. However under Article 81 (3) (third indent) it is provided that the opposition of a single national Parliament to a proposal from the Commission in this context will be sufficient to block it. The Government welcomes this protection for the principle of unanimity in this area.
14. Finally, it should be recalled that, regardless of whether a proposed Title IV measure properly constitutes a “family law” measure for the purpose of that Title, it will always be subject to the United Kingdom and Ireland’s Protocol in this area. This allows those countries to decide whether or not formally to participate in the negotiations on a particular measure. If one of them decides not to do so, then it will not be legally bound by the measure when the Council finally adopts it. This decision is purely a matter for those countries and is taken in the light of an assessment by them as to whether the measure in question would be in their national interest. This constitutes an important safeguard in respect of measures that would clearly have significant undesirable implications for the legal systems of those countries.

**FIGHT AGAINST CYBER CRIME (10089/07)**

*Letter from Vernon Coaker MP, Parliamentary Under Secretary of State, Home Office, to the Chairman*


**LEGAL BASE**

The Communication is not in itself a legislative proposal and without any specific legislative proposals it is difficult to take a firm view on legal base, but it seems most likely that any legal base would be found in Title VI of the Treaty on European Union.

**DEFINITION OF CYBER CRIME**

The Government would welcome more in-depth discussion of what constitutes a cyber crime. This dialogue has already started in the context of debate on the Council conclusions on cyber crime adopted by the Justice and Home Affairs Council on 8–9 November 2007. However we would not want to move from our position of prosecuting crimes for the offence committed rather than the medium used. This is a model that not only the UK but other countries have adopted successfully.

**COUNCIL OF EUROPE CONVENTION**

Our initial view, in the absence of any specific proposals, is that none of the current proposals from the Commission would fall within the First Pillar.

The UK will ratify the Council of Europe Convention on Cyber Crime when the Police and Justice Act 2006 comes into force, after April 2008.

*14 November 2007*

*Letter from the Chairman to Vernon Coaker MP*

Thank you for your letter of 14 November which was considered by Sub-Committee E at its meeting of 28 November 2007.

We are grateful to you for your clarifying that the legal base for any future legislation would be likely to be found in Title VI TEU and that “none of the current proposals from the Commission would fall within the First Pillar”. We note the contrast with your earlier view, set out in your letter of 26 July 2007 when asked whether the Government considered external competence to exist here, that “it is not clear that all of the relevant matters fall under the third pillar”. We are pleased to see that the Government have given some further thought to this issue.

We welcome the Government’s commitment to more in-depth discussion of what constitutes cyber crime, a discussion which we consider necessary in order to arrive at an effective EU cyber crime policy.

We are content to release the Communication from scrutiny.

*29 November 2007*

**FUNDING OF POLITICAL PARTIES AT EUROPEAN LEVEL (11559/07)**

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

Thank you for your letter of 16 October informing me that you are retaining the proposal under scrutiny until the Government’s response to the House of Commons’ European Scrutiny Committee.

Following further discussion in the General Affairs working group in Brussels, I am now in a position to respond to the questions raised by that Committee.

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7 Correspondence with Ministers, 11th Report of Session 2008–09, HL Paper 92, p 204.
The first question raised concerned the legal base of the proposal. As far as the legal base for funding is concerned, we are content that Article 191 TEC provides a sufficient legal base for the provisions relating to European foundations, on the basis that the Regulation requires the foundations to be very closely linked to the relevant European political party. Relevant factors contained in the Regulation include:

(i) the foundations must be affiliated to a political party at European level;
(ii) their activities must underpin and complement the objectives of the political to which they are affiliated;
(iii) their application for funding must be made through the political party to which they are affiliated; and
(iv) if the political party to which the foundation is affiliated forfeits its status the foundation is excluded from funding.

The second question you raised related to the plurality of views amongst political foundations. I can confirm that the UK has successfully secured the amendment of the draft proposal in order to ensure a diverse number of views amongst Political Foundations. The text will now read:

“Political Foundations perform the task of observing, analysing and contributing to the debate on European public policy issues and on the process of European integration.”

All other Member States have indicated they are content to accept this change. I hope therefore that the Committee is now reassured on this point.

I should add that, during discussions in Brussels, concerns have been raised that the derogations from the Financial Regulation, contained within the proposal with regard to the rollover of funds and the building-up of reserves, should be done by way of a separate amending proposal to that Regulation based on Article 279 TEC. The Portuguese Presidency has therefore now separated out these two individual provisions into a separate text under Article 279.

For your information, I attach both the revised draft texts. As you will see, although the format has now changed, the substance remains very largely the same, and we support the change.

I would stress that during the working group negotiations, the UK has also been successful in helping to reinforce the safeguards in the original draft proposal on ensuring that funding for European Parliament election campaigning cannot leak to national or local level. We have also secured additional language underlining that any funds can only come from the European Parliament’s own budget and that derogations from the Financial Regulation must by their nature be exceptional.

The Presidency’s intention remains to secure a rapid first reading deal with the European Parliament before the end of the year. It is likely that this proposal will be discussed at COREPER on 28 November before going to the Council of 13–14 December.

15 November 2007

Letter from the Chairman to Jim Murphy MP

Thank you for your letter of 15 November which was considered by Sub-Committee E at its meeting on 5 December. We are grateful for the explanations you have given and note the proposed timetable for the adoption of this measure. In the circumstances we are prepared to clear the document from scrutiny.

However, we remain concerned on the question of legal base. We do not share the Government’s confidence that Article 191 enables the funding of European Foundations even if affiliated to a political party. It is clear that the Foundation remains separate from the political party and the power in Article 191 is expressly limited to “rules regarding their [i.e. political parties] funding”. At a time when attention is being given to such funding, a cautious approach might be preferred.

6 December 2007

Letter from Jim Murphy MP to the Chairman

Thank you for your letter of 6 December. I am grateful that the Committee has agreed to clear the document above from scrutiny in time for agreement under the Portuguese Presidency.

I agree that a cautious approach is required when addressing the funding of political entities and I note your concerns on the question of Article 191 as the legal base for the establishment of European Political Foundations. I would nevertheless stress that the Government, all the other Member States, and the European
Parliament, having carefully considered the issue, are satisfied that article 191 is an appropriate legal base for the relevant measure.

17 December 2007

INDEX OF THIRD COUNTRY NATIONALS CONVICTED IN THE EU (11453/06)

Letter from Meg Hillier MP, Parliamentary Under Secretary of State, Home Office, to the Chairman

When I wrote to you last August\(^9\) I said that I would update the Committee when the situation on the Commission Document on the feasibility of an index of third country nationals convicted in the European Union changed.

There is no formal legislative proposal from the Commission and we do not expect one to be issued in 2008. However, on 6 March, the Article 36 Committee considered four possible options for taking this work forward, set out in a Commission non-paper. The Government welcomes this positive development and made it clear that, in principle, we support the creation of an index.

One option was a “non-option” which is to do nothing. The Government does not support this. There needs to be a better mechanism for our authorities to obtain the criminal record of a person arrested and facing criminal proceedings in the UK, regardless of whether they are an EU or non-EU national. At present, the only way to obtain information on convictions imposed in other Member States would be to send individual requests to all 26, which is inefficient and unlikely to produce reliable results.

The second option is for an index containing only alphanumeric information, such as the date of birth and name of the person. This does have advantages over a do-nothing option, as the information would be stored in a central place thus requiring only one request to obtain information on convictions in all Member States. We do not view this as completely satisfactory as an alphanumeric system does not provide the proof of identity at a level that we consider necessary. Experience with the exchange of criminal records relating to UK nationals has shown that there have been challenges (and at least one has been valid) on the grounds of mistaken identity when the information has not included some form of biometric identifier such as fingerprints. Even if the information is found to be correct, there is a significant time factor when having to refute a challenge.

Two possibilities for the inclusion of biometric identifiers were proposed: either for a comprehensive index containing fingerprints of all those convicted of all criminal offences, or for an index limited to certain serious crimes. The Government supports creation of a comprehensive index containing biometric identifiers for those convicted of all offences. Positive proof of identity is vital and needs to be a routine part of the process by which one Member State finds out if a third country national has convictions in another Member State.

The vast majority of Member States agree that doing nothing is not an option. On the other hand, only Cyprus has fingerprints on its register of criminal convictions in the same way that we do. The majority were therefore unable to support creation of an index containing fingerprints as a short-term solution, although they did not rule this out as a desirable longer-term goal.

In terms of next steps, the Commission will initiate a feasibility study on establishing an alphanumeric index as well as the possibility to expand this to include fingerprints at a later stage. It hopes to report by the end of 2008.

No further debate on the 2006 Communication is anticipated. I will keep the Scrutiny Committees informed of any further substantive developments in this area, including in due course on the outcome of the feasibility study and any legislative proposal.

4 April 2008

INTELLECTUAL PROPERTY RIGHTS (8866/06)

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

Thank you for your letter of 16 October 2007\(^9\) regarding this proposed Directive. Since my last letter there has been no progress made on this dossier in the Council. This is predominantly because the Council has been content to await the judgment of the European Court of Justice in case C 440-05 (Ship source pollution Framework decision) in the expectation of clarification of the scope of Community criminal law competence. The Government continues to share the Committee’s doubts about the suitability of Article 95 TEC as a legal
base and concerns about the ambiguity of terms such as “on a commercial scale”, and maintains its belief that the case for the necessity of this Directive has not been made out. At this stage, I can only confirm that there have been no formal discussions of these issues in the Council.

As you will be aware the judgment of the European Court of Justice in case C440-05 on the ship-source pollution Framework Decision was issued on 23 October 2007. The Government considers that the judgment should not be regarded as authority for the generalised inclusion of criminal law obligations in First Pillar instruments that are not connected to the environment. We will of course monitor the developments of consensus on the interpretation of the judgment in the Council in the coming weeks but one possible outcome is the withdrawal of this draft instrument due to lack of Community competence to legislate.

12 November 2007

Letter from the Chairman to Bridget Prentice MP

Thank you for your letter of 12 November 2007, which was considered by Sub-Committee E at its meeting of 28 November 2007.

Your update on recent developments was most helpful. We note the Government’s position as regards the judgment in Case C-440/05 Ship Source Pollution and look forward to hearing from you as regards any emerging consensus on the interpretation of the ECJ judgment.

We would be grateful if you would keep us up to date on any developments in this matter.

The proposal is retained under scrutiny.

29 November 2007

JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS: LUGANO II (5296/08)

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

This proposal was considered by Sub-Committee E at its meeting on 2 April 2008.

The Committee decided to clear the proposal from scrutiny.

3 April 2008

JUDICIAL TRAINING IN THE EU (11243/06)

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

Thank you for your letter of 31 October 2007 which was considered by Sub-committee E at its meeting of 15 November 2007.

We are grateful for the additional information you provide regarding the participation of UK judges in exchange programmes and language training. We note that the problem here appears to be solely related to workload and we urge the Government to assess what steps can be taken to try and promote the participation of our judges in this valuable exercise. Might not this be assisted if there could be exchanges for less than the current two week minimum? We urge the Government to pursue this possibility.

We note what you say as regards the principle of pillar purity. It is not clear to us why the EJTN could not have been set up by a First Pillar instrument according a first pillar mandate to the Network, with a Framework Decision extending that mandate to cover the Third Pillar. We recall that this was the method originally proposed for the Fundamental Rights Agency, when it was contemplated that that Agency would operate across both the First and the Third Pillars. We would welcome your comments on this.

The Communication is retained under scrutiny.

22 November 2007

Letter from Bridget Prentice MP to the Chairman

Thank you for your letter of 22 November. You remain concerned about lack of participation by UK judges in exchange programmes and language training and about the way in which the European Judicial Training Network (EJTN) was set up.

I agree that it is important to continue to encourage judges to take part in this training and I know that the Lord Chief Justice is similarly keen to do so. An advertisement was published on 10 December giving details of one of this year’s EJTN programmes and suggesting a number of projects that could be undertaken by judges who were interested in participating in the exchange for judicial authorities. The advertisement was intended to demonstrate the solid worth of the exchanges and the variety of work that judges could undertake on them. Judges have been asked to submit applications by 7 January. Like you, I hope that there will be a better response this year. Shorter exchanges have disadvantages but may be worth pursuing as a possible means of engagement. If you would like to make further suggestions about how to encourage judges’ participation in the EJTN, you may like to write direct to the Lord Chief Justice, who bears responsibility for this.

You ask why the EJTN could not have been set up by a First Pillar instrument then extended to cover the Third Pillar by a Framework Decision. This may have been technically possible. However, the judicial colleges of Member States decided to proceed by setting up the EJTN as a limited company, without the need for an EU legislative instrument.

16 December 2007

Letter from the Chairman to Bridget Prentice MP

Thank you for your letter of 16 December 2007 which was considered by Sub-Committee E at its meeting of 16 January 2008. We have decided to clear the Communication from scrutiny.

We welcome your conclusion that the possibility of shorter exchanges may be worth pursuing. No doubt you will assess what steps might be taken to explore this possibility once the level of response to the December advertisement has been assessed.

We are grateful to you for clarifying that it would have been possible to establish the EJTN within the EU framework. You will recall that the EM submitted with the Communication on 20 July 2006 advised that the EU proposal to set up an EJTN ‘foundered for technical reasons’ relating to pillar purity. Your clarification is therefore most helpful.

17 January 2008

Letter from the Rt Hon Lord Justice Thomas, Judiciary of England and Wales, to the Chairman

I understand that you have been corresponding with the Ministry of Justice about the participation of the Judiciary of England and Wales in exchanges organised by the European Judicial Training Network. On behalf of the Lord Chief Justice, I have overarching responsibility for the interests of the judiciary in relation to European matters and in this capacity I thought it might be helpful to provide you with some information about our involvement in the programme of exchanges organised by the EJTN.

It has been always been our wish to play an effective role in Europe and we have, endeavoured to do so in so far as demands upon our time permit. We have, for a number of years, participated in events organised by a variety of organisations and by the judiciary of Member States and elsewhere. Our involvement generally in the formal exchanges organised by the EJTN however has so far been limited to hosting visits from members of the Supreme Court from Member States; although we were able to send one Judge (HHJ Cutler) to the Netherlands for a short period last year. Judges have played a significant part in these programmes which have been tailored to meet the specific needs of incoming judicial office holders by officials in the Judicial Office.

This year our engagement in the EJTN programme has been expanded to include the organisation of additional programmes for judicial office holders below Supreme Court level. Five members of the Judiciary of England and Wales will also be participating in the programme by visiting other Member States. Our increased participation has been possible as a result of the agreement of HMCS to support the initiative and more particularly to meet the cost of covering the absence of the participants for the duration of each of the programmes. We will review this year’s programme in due course to determine the benefits of further engagement in the future.
In the meantime, we continue to participate in international events that have particular relevance or afford us the opportunity of strengthening links with judiciaries in other countries and we continue to welcome visiting judiciary from Europe and beyond.

19 March 2008

JURISDICTION OF THE ECJ IN TITLE IV MATTERS (11356/06)

Letter from Meg Hillier MP, Parliamentary Under Secretary of State, Home Office to the Chairman

I am writing in response to your letter of 25 October 2007 (received 29 October) regarding the proposal from the European Commission to amend the jurisdiction of the European Court of Justice (ECJ) in relation to Title IV TEC (asylum, immigration and civil justice). I am very sorry that you have not received a response before now.

In your letter you refer to the Committee’s request that an Impact Assessment be carried out. You ask why the UK will be raising this outside of the Working Group rather than within, and what action the Government has taken to date. The Government contacted the Commission on 31 July 2007 as this issue had been taken off the Working Group’s agenda. The Commission replied stating that no impact assessment would be carried out. Should this issue return to the agenda of the Working Group, the UK will raise the Committee’s concerns in plenary. However, you will be to be aware that no further discussions of the proposal are planned at the current time since delegations agreed that negotiations should first be pursued on the related dossier creating the emergency preliminary ruling procedure for JHA cases.

You ask about the timing of the agreement on the proposed emergency preliminary ruling procedure. The Portuguese Presidency has indicated that it hopes to reach agreement on the emergency preliminary ruling procedure proposals by the end of their Presidency. As you will already be aware from the FCO, the proposal is due to be agreed at a Council on 20 December.

Finally, you ask how these proposals will be affected by the Reform Treaty. Since the Reform Treaty provides for all courts to be able to refer cases directly to the ECJ for interpretations of Community law, it is our view that the original Council Decision to amend the jurisdiction of the ECJ in relation to asylum, immigration and civil justice will be superseded. The Government has therefore supported the proposal for an emergency preliminary ruling procedure for JHA cases on the basis that courts in member states wishing to refer a question of European law in a JHA case are able to request that the Court give its ruling in an urgent manner. We understand that the Slovenian Presidency may seek to establish Member States views on whether the Article 67(2) decision should be revived and agreed before the entry into effect of the Reform Treaty. We will keep you informed of progress.

19 December 2007

Letter from the Chairman to Meg Hillier MP

Thank you for your letter of 19 December which was considered by Sub-Committee E at its meeting on 16 January. The Committee decided to retain the proposal under scrutiny.

We are grateful for your update on consideration of the emergency ruling procedure.

We note that further consideration of the Commission’s proposal may depend on the results of the Presidency’s soundings and look forward to further information on the progress on this dossier in due course.

17 January 2008

JUSTICE FORUM (6333/08)

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

This Communication was considered by Sub-Committee E at its meeting of 12 March 2008.

We welcome this Commission initiative and consider that the Forum could play a useful role in development and evaluation of EU policies and legislation in the area of civil and criminal justice. There is a need to enhance mutual trust across the EU in other Member States’ judicial processes and to the extent that the new Forum can play a role in addressing this issue, we would regard this as a very positive development.

12 Correspondence with Ministers, 11th Report of Session 2008-09, HL Paper 92, p 213.
We note your concerns regarding the proposed participants in the Forum. We agree that there is a need for participation by users of judicial systems and would be grateful for a full list of participants once this is available. We strongly welcome the proposed cooperation with CEPEJ and other relevant Council of Europe bodies as appropriate. We think the key to the success of this sort of initiative is a focussed approach with the right experts attending the relevant meetings and an attempt at the end of each meeting to issue clear-cut conclusions. Expenditure should be kept within reasonable parameters.

Like the Government, we would also expect the Forum to be in addition to the Commission’s usual consultation process and would be grateful if you would, following discussion with the Commission, confirm that this is the case.

The Commission proposes a role for the Forum in examining the matter of statistics. We have in the past emphasised the need for evidence-based policy and the importance of collecting appropriate and reliable statistics. We have also drawn attention to the relevance of statistics collected by the Council of Europe and their potential value in informing proposed EU policy. It is encouraging to see that the Commission has recognised the need for further examination of statistics in civil and criminal justice and we trust that the Government will encourage this aspect of the Forum’s work.

We have decided to retain the Communication under scrutiny. We look forward to hearing from you following the first Forum plenary on 15 April with a summary of the proceedings and your views.

13 March 2008

LAISSEZ-PASSER ISSUED TO MEMBERS AND SERVANTS OF THE INSTITUTIONS (5549/08)

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

Your Explanatory Memorandum dated 31 January was considered by Sub Committee E at its meeting on 20 February. The Committee decided to clear this proposal from scrutiny.

We should, however, be grateful for an explanation for the point, made at paragraph 20 of your Explanatory Memorandum, that the eventual decision on the format of the laissez-passer can (and should) be budget neutral. Do you have in mind, for example, that holders of the new laissez-passer should pay for them?

21 February 2008

Letter from Jim Murphy MP to the Chairman

Thank you for your letter of 21 February regarding the new format of the EU laissez-passer. I am grateful for your indication that the Committee cleared this proposal from scrutiny.

You asked for an explanation on the point in my Explanatory Memorandum that the eventual decision on the format of the laissez-passer must be budget neutral.

Neither the Government nor the Commission has in mind that holders of the new laissez-passer should pay for them. Given that the laissez-passer are for travel while on official business, it would not be appropriate to ask staff to pay for them. The Commission intends to cover the costs from the Community budget.

However, the UK will insist that the financial impact of the new format of the laissez-passer does not result in any net increase to the Community budget, and will press the Commission to ensure that costs are covered from efficiency savings made elsewhere. Such savings could, for example, be found through the increased use of information technology.

Guaranteeing budget neutrality will be done without prejudice to ensuring that the laissez-passer meet modern technical standards.

We and other Member States have made this clear to the Presidency and Commission as a guiding principle for work on the laissez-passer.

6 March 2008
MAINTENANCE OBLIGATIONS (5198/06, 5199/06)

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

I am writing to provide an update on negotiations on the above dossier. You are aware that the Government decided not to opt into this proposal under our Title IV Protocol but we indicated at the time that we would continue to play an active part in negotiations hoping that our concerns could be resolved so that we might seek to adopt the regulation at its conclusion. I undertook to provide your Committee with updates on progress in the negotiations and take this opportunity to inform you of the latest position.

Progress on the EU proposal has been relatively slow, largely because the work has been overshadowed by concurrent negotiations on the same topic in the Hague Conference. This was sensible, since it is obviously important that the EU proposal complements the wider international Convention. The negotiations on the proposed Hague Convention have now concluded, very successfully for the UK, and work on the EU proposal can now better attempt to build from that basis.

A new text of the proposal has been circulated by the Slovene Presidency which attempts to incorporate the agreements reached in the Hague where possible. There have been initial discussions at official level on this text, a copy is at Annex A (Council Document 5169/08) (not printed). Of particular interest for the UK is that the issue of the applicable law rules has been flagged as one area where the Hague Convention needs to be reflected. The Hague approached this issue with an optional associated Protocol which would allow those contracting States which want to use those rules to do so, whilst allowing those that do not, not to have to but still be able to participate in the rest of the Convention. You will recall that the inclusion of the applicable law rules within the body of the EU proposal was a key reason why the UK chose not to opt in to the EU proposal.

The EU Council Secretariat has suggested four options for how this might now be approached in the EU text. The four options are:

(a) Incorporation of the rules on applicable law in the Regulation and acceptance of the Hague Protocol;
(b) a Regulation without applicable law rules with an additional Regulation on applicable law and the Hague Protocol
(c) a Regulation without applicable law rules and accession to the Hague Protocol by the EU and
(d) a Regulation without applicable law rules and accession to the Hague Protocol by individual Member States.

The first of these options would retain the applicable law rules within the text and as such does not seem to take us further forward in terms of the UK position in seeking the removal of those rules. Each of the other three options would, however, remove those rules so that potentially they need not apply to the UK but would allow the UK to participate in the rest of the provisions in the proposal so each of these may be acceptable to the UK. Each seems to raise different issues about the way that is done and it is likely that other Member States will favour different options, including the first option. We are currently considering these options to assess which might be preferred. On the face of it, our initial view is that option (b) seems to offer the neatest solution to the UK position in this regard. It is not clear at this stage which options will be supported by other Member States since there has been only the briefest exchange of initial views at official level. It is clear some Member States will favour option (a). We are currently considering the options to inform our position and I would be happy to write with a further update once the position on this is clearer. We will also need to reach a position on how this might affect our overall position on the proposal in due course, and will want to consult with you and others in that process. Meanwhile I hope this update is helpful and I should, of course, be grateful for any observations the Committee wishes to make.

18 March 2008

Letter from the Chairman to Bridget Prentice MP

Thank you for your letter of 18 March which was considered by Sub-Committee E at its meeting on 2 April. The Committee decided to retain the proposal under scrutiny.

The Committee welcomes the direction of travel which the negotiations on the draft Regulation appear now to be taking. Since the text has undergone considerable change, we should be grateful if you would provide a supplementary Explanatory Memorandum explaining the changes and assessing their impact, and the Government’s views on them. In particular, do you consider that the text now aligns properly with the revised Hague Convention?
The issue of applicable law seems to us to be the most important aspect. We gladly take up your offer to let us know your assessment of the options suggested by the Council Secretariat, and would be grateful also for an explanation of the effect of option (c) (EU accession to the Hague Protocol) for the UK.

3 April 2008

Letter from Bridget Prentice MP to the Chairman

Thank you for your letter of 3 April in which you requested a supplementary Explanatory Memorandum. In view of this request, I have given instructions for the latest draft of the proposal to be Deposited. This will, of course, trigger the requirement for a further Explanatory Memorandum and thereby answer your request. I hope this is helpful and will bring the Committee up to date. This dossier is rapidly changing, however, and I will endeavour to keep the Committee fully informed and consulted in particular if a stage is reached where there is a realistic chance of the UK considering opting back in to the proposal.

17 April 2008

MEDIATION IN CIVIL AND COMMERCIAL MATTERS (13852/04)

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

I am writing to inform you about the progress in the negotiations of this proposed Directive. On 24 October 2007 your Committee sent notification that the proposal had been cleared from scrutiny received political agreement at the Council on 9 November. The Council then adopted a Common Position on 28 February 2008 which was approved by the European Parliament without amendment on 23 April. We now await publication in the Official Journal. The adopted Directive will enter into force 20 days after publication and Member States will then have three years to comply with its provisions.

For your information I enclose a copy of the Common Position as adopted by both the Council and Parliament. While there have been some mainly technical and language changes the text is in substance the same as the one I sent you on 5 October, subject to the amendments I described in my covering letter.

I note that when you cleared this proposal from scrutiny you highlighted the need to give careful consideration to its impact on arbitration. I can confirm that your concerns were passed to the Department for Business, Enterprise and Regulatory Reform which has policy responsibility for arbitration.

30 April 2008

POPULATION AND HOUSING CENSUSES (6768/07)

Letter from Angela Eagle MP, Exchequer Secretary, HM Treasury, to the Chairman

I write in response to your letter dated 26 April to John Healey, Financial Secretary, with regard to the draft European Parliament and Council Regulation on Population and Housing Censuses. Responsibility for census matters has now passed on to me and I must sincerely apologise for the delay in replying but, as I think you are aware, the original correspondence was mislaid and has only now come to light.

I am able to respond to the particular issues you raised and report on subsequent progress. At a meeting of the Council of Ministers Statistical Working Party (STATIS) in Brussels on 3 May, at which the UK was represented by ONS officials, significant progress was made in scrutinising a revised proposal submitted by the Presidency in response to comments made by Member States following an earlier meeting of the Group on 5 March. Many of the detailed comments made by the UK after that meeting are now reflected in the revised proposals.

In particular, at the request of the UK and some other Member States, the previous references in the Regulation to the provision of outputs from the census in the form of microdata as part of the programme of statistical data have been removed. This addresses the UK’s concern that a mandatory obligation to provide Eurostat with data in such a form might have conflicted with some Member States’ domestic legislation protecting against the disclosure of census information.

The issue of the provision of statistical outputs based on topics identified as non-core by the current Conference of European Statisticians Recommendations for the 2010 Census of Population and Housing has now been satisfactorily resolved, in that reference to such topics in the Annex of the Regulation has been

Correspondence with Ministers, 30th Report of Session 2007–08, HL Paper 184, p 316.
entirely removed at the request of the UK and a number of other Member States. The inclusion of such non-core topics would have imposed an additional burden on the public and would have added a significant cost to the Census. Many of the non-core topics have never previously been collected in the UK Census and for which there has been little or no user requirement for information, either to inform national government policy or to meet local authority needs.

In response to the Committee’s concerns about a full Regulatory Impact Assessment not having been carried out, I understand that ONS officials have raised this matter with the Commission but that the Commission felt that the Analysis of Consequences previously undertaken was sufficient for the purposes of assessing the requirement for the legislation. I might add that this was not felt to be an issue by any other delegate at the STATIS meeting on 3 May and, it would seem, that the UK was the only Member State not satisfied with the Analysis of Consequences prepared by the Commission.

You will want to be aware that a number of more recent amendments to the Regulation, mainly concerning the inclusion of additional topics within the scope of the Regulation and a requirement for Member States to undertake feasibility studies on the inclusion of such topics in future censuses, were proposed following consideration of the draft Regulation by the EU’s Employment and Social Affairs Committee in December. However, at the insistence of the UK and a number of other Member States these were also removed from the revised proposal that is now due to be put to the vote in Council on 19 February 2008.

The UK continues to be a leading participant in the EU Census Legislation Task Force. The task force is charged with making recommendations to the Commission on the content and format of the statistical programme, to be set out in the proposed subsequent Commission Regulation for the 2011 round of European censuses, and which, I understand, is likely to be considered by the Statistical Programme Committee towards the end of the year.

In conclusion, I can confirm that these and the other concerns expressed in the Financial Secretary’s original submission to the Committee have now been broadly met by the revised proposals for the Council Regulation and/or through separate dialogue with the Commission and Eurostat. You will, no doubt, be aware that I have written previously to the House of Commons Scrutiny Committee to address its similar concerns, and I understand that its own scrutiny reserve has now been lifted.

31 January 2008

Letter from the Chairman to Angela Eagle MP

Thank you for your letter of 31 January 2008 which was considered by Sub-Committee E at its meeting of 6 February 2008.

We are grateful for the comprehensive update you provide and are pleased to see that the UK’s concerns regarding data protection and ensuring that data collection does not impose too great a burden on the public have been addressed. It is, however, to be regretted that the Commission were not prepared to undertake a full impact assessment in this case.

We have decided to clear the proposal from scrutiny.

7 February 2008

PROTECTION OF THE ENVIRONMENT THROUGH CRIMINAL LAW (6297/07)

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

I am writing to inform you of the latest developments on this dossier. The negotiation of the instrument in the Council working group has progressed very well since the publication of the judgment of the European Court of Justice in the ship source pollution case (C440/05). The current Presidency working text, which substantially reflects drafting proposals submitted by the United Kingdom, is now very different from the original Commission proposal and has broad support in the Council. The definitional provision and the formulation of the offences at Articles 2 and 3 have been tightened up and much of the original text of the penalty provision at Articles 5 and 7 has been deleted. The criminal offences are now restricted to infringements of community law and national implementing law and the penalty obligations amount to a simple requirement for Member States to meet such infringements with effective, proportionate and dissuasive criminal sanctions.

The way forward from here requires some explanation. The Portuguese are understandably keen to make as much progress as possible before the end of their Presidency. To that end the Presidency has indicated that they would like to secure a general approach at the next Justice and Home Affairs Council of 6–7 December 2007. It is not clear, however, how such a course will assist in facilitating an early conclusion of the co-decision
procedure under which the instrument must be adopted. The European Parliament suspended consideration of the proposal awaiting the judgment in the ship source pollution case, but has now resumed and is working towards producing a draft report in January 2008.

The Government believes that the most effective approach would be to have an exchange of views on progress at the JHA Council and gain a steer for the next stage of the negotiation process, with a view to adopting a common position at COREPER to allow the Presidency to open informal discussion with the European Parliament in anticipation of the European Parliament’s report early next year. We will be making representations to the Presidency in accordance with this view, informally and at working group level.

It may be, however, in spite of the issues explained above, the Presidency will continue to seek a general approach at the JHA Council on 6 and 7 December. Given the active role we have taken to improve the text I am keen to support the revised text now we have before us. I will of course update the Committee after the discussions at the JHA Council when I hope things will become clearer on how this proposal will move forward.

27 November 2007

Letter from the Chairman to Bridget Prentice MP

Thank you for your letter of 27 November which was considered by Sub-Committee E at its meeting on 12 December. We are grateful for your keeping the Committee informed of developments. Clearly there have been substantial changes to the text which we hold under scrutiny. Accordingly we would be grateful if you would submit for scrutiny a copy of the latest text of the proposal together with an Explanatory Memorandum describing the main changes from the text presently held under scrutiny (Doc 6297/07) and the Government’s reactions to them.

The Committee decided to retain the proposal under scrutiny. We look forward to receiving the new text.

13 December 2007

Letter from Bridget Prentice MP to the Chairman

Thank you for your letter of 13 December 2007 regarding the above dossier. I apologise for the delay in responding to you. As soon as the European Parliament produces a draft report on the original Commission’s text we will deposit that text. A draft report is expected to come out by the end of January 2008. In the meantime I would like to update you on the changes proposed in the current Presidency working text.

Article 1 remains unchanged.

The definitional provision of Article 2 has been amended in the following ways. The definition of ‘unlawful’ has been amended to restrict unlawful conduct to Community legislation or a law, an administrative regulation or a decision taken by a competent authority in a Member State that gives effect to the relevant Community legislation. For this purpose an annex listing the relevant Community legislation has also been added. The Article now also includes new definitional provision for ‘protected wild fauna and flora species’ that restricts the scope of the offences at Article 3 to the most endangered species. The definition of a legal person has been amended to exclude public bodies that exercise ‘State authority’ rather than ‘sovereign rights’. The Government is content with these changes. Article 2 also now includes a new definition of ‘protected habitat’. I will refer to this in more detail below but the Government does not support his definition because we consider the habitats provision at Article 3 to be outside the scope of competence and unnecessary on policy grounds.

The term ‘unlawful’ is now included within the chapeau of Article 3. Original indents (a) and (b) of Article 3 have been merged. Article 3(b) now deals with waste and, in anticipation of the adoption of the new draft Waste Directive, has been redrafted to reflect the language of that Directive. Original Article 3(d) on the operation of a plant remains unchanged but as new 3(c). The paragraph dealing with the shipment of waste now refers to activity which falls within the scope of the relevant Community legislation rather than to the extent to which that legislation provides a definition of the shipment of waste. Nuclear materials are now dealt with at Article 3(e) but the provision otherwise remains the same. The provision on protected fauna and flora that was originally at paragraph (g) has now been split between new paragraph (f) dealing with possession, taking, destruction and killing of protected fauna and flora and new (g) dealing with the unlawful trade therein. Article 3(h) now deals with protected habitats. Article 3(i) remains unchanged. The Government is content with the changes to Article 3.

Article 4 has been amended so as to reflect language used in other instruments and now requires Member States to ensure that inciting, aiding and abetting the offences at Article 3 is a criminal offence.
In accordance with the judgment of the European Court of Justice in case 440/05 all of the provision dealing with the approximation of the nature and severity of penalties has been deleted from Article 5, which now simply requires Member States to ensure that the offences referred to in Articles 3 and 4 are punishable by effective, proportionate and dissuasive criminal penalties.

A reference to Article 4 has been included in Article 6(1) so that Member States must ensure that legal persons can be held liable for offences referred to in both Articles 3 and 4. The passage in 6(1) which referred to Member States ensuring that legal persons can be held liable for their involvement as accessories or instigators in the commission of the offences has been deleted.

All the financial penalty approximation provision in the original has now been removed from Article 7 for the same reasons for the removal of much of Article 6. The article now simply requires Member States to ensure that legal persons held liable pursuant to Article 6 are punishable by effective, proportionate and dissuasive penalties.

Article 8 has been deleted.

Parts of the first paragraph of Article 9 on transposition has been deleted from the text and moved to a redrafted recital to the effect that Member States should draw-up tables illustrating, as far as possible, the correlation between this Directive and the transposition measures and to make the public. The Government is content with these changes.

Outstanding Issues

As regards habitats, the Government’s view is that the current language should be deleted for three reasons. First because it is outside the scope of Community competence as described in the judgment of the European Court of Justice in case C440/05 due to the absence of a clear prohibition in the relevant Community law. Second, because the provision does not provide the precision required for compatibility with the European Convention on Human Rights. Third, as drafted the obligation is far too broad from a policy perspective. As a general proposition the effective protection of habitats across the EU can and does involve a variety of measures depending on the specific issues relating to any one kind of habitat, as has been pointed out by a number of other delegations to the expert working group. These measures range from contractual obligations and conditions attached to grants and subsidies to more robust enforcement including administrative and criminal sanctions.

Other outstanding issues include the extent to which matters relating to nuclear material should be legislated under the environment Community legal base rather than the Euratom Treaty and the inclusion of a reference to death and serious injury in the elements of the offences in Article 3. As regards the former, the Presidency proposes a solution which envisages special references in the Recitals and in the text to the Euratom Treaty. The Government would be content with a solution of this kind. As regards the latter the Government remains of the view that the reference to death and serious injury are not in keeping with the main purpose of the Directive.

29 January 2008

Letter from the Chairman to Bridget Prentice MP

Thank you for your letter of 29 January which was considered by Sub-Committee E at its meeting on 20 February. The Committee decided to retain the proposal under scrutiny.

We are grateful for your update and we look forward to seeing the latest text of the draft Directive with the report of the European Parliament. You will recall that, in my letter of 12 December, I asked for a further Explanatory Memorandum on the changes which have been made since the proposal was first published, as well as the latest draft of the Directive. We cannot complete our scrutiny without these.

Would you also please let us know the expected timetable for the further stages towards adoption of the Directive?

21 February 2008

Letter from Bridget Prentice MP to the Chairman

Thank you for your letter of 21 February 2008 regarding the above dossier. I note that the proposal is retained under scrutiny. I enclose the latest Presidency text on the Environment dossier (not printed)\(^15\) and the Annex of Community legislation\(^16\) together with a Supplementary Explanatory Memorandum for your information (not printed). As indicated in my letter of 29 January I will also formally deposit the European Parliament’s
report when it is issued along with a further Explanatory Memorandum giving the Government’s views. We do not yet know precisely when this will be but a draft report of the lead JURI committee is expected next month.

You ask about the further stages toward adoption of the Directive. The following summary is based on the information available at the moment. As you are aware both parts of the co-decision process are formally proceeding in parallel, with the Presidency and the rapporteurs of the relevant European Parliament committee providing the necessary informal links. JURI committee in the European Parliament, in association with the ENVI committee will be producing a draft report setting out proposed amendments. This report is expected during April. Meanwhile the Presidency is seeking agreement within the Council, probably at COREPER, on a text to form the basis of informal discussions with the European Parliament, which if a first reading agreement on the instrument is to be achieved must be reached by the end of March. My understanding is that the Presidency will then negotiate with the Committee rapporteurs with a view to agreeing the amendments necessary to achieve majority consensus on the same text on both sides, returning to COREPER on specific points if necessary. If necessary COREPER will agree a general approach on an amended text, allowing the EP to adopt a report in Plenary in May. Council can make no further changes, although it is likely that the dossier would then go to the June Council for political agreement in anticipation of full adoption at a future Council.

14 March 2008

Letter from the Chairman to Bridget Prentice MP

Thank you for your letter of 14 March and the accompanying Supplementary Memorandum and the latest Presidency text. These were considered by Sub-Committee E at its meeting on 2 April.

We are grateful for your further update and note that the issues we raised, and with which the Government had concerns, have been resolved satisfactorily. Your Memorandum says that the financial implications of this proposal would not be significant. We should be grateful for your assessment of where any financial burdens would fall and of their likely magnitude. The Committee decided to retain the proposal under scrutiny and we look forward to examining the views of the European Parliament.

3 April 2008

ROLE OF EUROJUST AND THE EUROPEAN JUDICIAL NETWORK IN THE FIGHT AGAINST ORGANISED CRIME AND TERRORISM (14253/07)

Letter from the Chairman to Meg Hillier MP, Parliamentary Under Secretary of State, Home Office

This proposal was considered by Sub-Committee E at its meeting of 21 November 2007.

Like the Government, we welcome the Commission’s Communication as a basis for discussion of Eurojust’s performance since its creation and of the possibilities for developing its role and powers.

We note that a number of the Commission’s proposals are acceptable to the Government, including enabling national members to transmit requests and to ask national authorities to take certain measures, absorbing network secretariats into Eurojust and clarifying the relationship between the EJN and Eurojust. We, too, welcome these suggestions, which are both helpful and, in some cases, reflect current practice.

As you point out in your EM, the grant of autonomous powers to Eurojust in relation to national investigations and prosecutions is a more delicate issue. In this regard, we note the introduction of a new Article 69h in the Treaty on the Functioning of the European Union which would provide a legal basis for action. Clearly, close regard will have to be paid to subsidiarity issues when considering such developments and, should the Commission seek to introduce legislative proposals of this nature, we would expect them to make the case for the need for such enhanced powers for Eurojust.

Finally, as regards granting Eurojust the competence to resolve conflicts of jurisdiction, we consider that this is a matter which should be kept under review. The Commission, at page 6 of the Communication, notes that the few rulings Eurojust has made to date have all been accepted. The need for a power to make binding decisions has therefore not in our view, been demonstrated at this time. There does appear to be, however, a need for further information and statistics on the scale of the conflicts of jurisdiction problem. Are there statistics on conflicts of jurisdiction in criminal cases between Member States? How frequently do conflicts of jurisdiction involving the UK and another Member State arise? Do relevant UK authorities have recourse to Eurojust and if so, what has been their experience of the assistance provided by that body?

We have decided to retain the Communication under scrutiny.

22 November 2007
Letter from Meg Hillier MP to the Chairman

Thank you for your letter dated 22 November 2007 in response to the Explanatory Memorandum (EM) deposited to the Scrutiny Committees on the 7 November 2007. You raise a number of points about the need for further information and statistics on the scale of the problem surrounding conflicts of jurisdiction.

Traditionally Eurojust has not collated statistics on this issue, although we understand that a recent change to the Case Management System in Eurojust will remedy this for the future. In the meantime, however, you may wish to be aware of a report produced by Eurojust National Members in June 2007 (which is enclosed) that deals with the UK and Spain on the issue of conflicts of jurisdiction, where they considered 17 examples of conflict of jurisdiction cases from 2003 to 2006.

As you will be aware, Eurojust has the power to make recommendations to Member States through its College (the governing body) about who should take forward a prosecution where a conflict of jurisdiction arises. These recommendations are not binding. Eurojust has also developed a set of guidelines to assist Member States in resolving such disputes, which UK prosecutors have reported to be useful.

I understand that whilst discussions with foreign counterparts as to the best way to handle a case are becoming increasingly common, they rarely escalate to what might be termed a “conflict” requiring the formal intervention of the Eurojust College. Since 2002, the College has only made formal recommendations in three cases, only one of which involved the UK (where the recommendation that Spain should pursue the prosecution was accepted). This would appear to endorse the view in your letter, which the Government shares, that the need for Eurojust to have a power to make binding decisions has not been demonstrated.

All the main prosecuting authorities in the UK have recourse to Eurojust and make use of their services as appropriate. They regard Eurojust’s key strength for the UK in its ability to facilitate meetings between the correct prosecutors and particularly the provision of interpretation, not just linguistic but also in the sense of “interpreting” a foreign legal system. Experience in this context has largely been positive.

Finally, I would reiterate that the Government does not want to see binding powers of dispute resolution being conferred on Eurojust. We think that this would deter prosecutors from involving Eurojust and open up a potential avenue of challenge for the defence, which could potentially delay a case. As previously stated in my Explanatory Memorandum, the Government would also be concerned about any legislative proposal, which sought, for example, to grant autonomous powers to Eurojust in relation to the operation of national investigations and prosecutions, which the Government believes should remain the preserve of Member States.

I hope this addresses the points you made and I will keep the Committee updated on the developments.

7 December 2007

Letter from the Chairman to Meg Hillier MP

Thank you for your letter of 7 December which has been considered by Sub-Committee E.

We are grateful to you for the additional information you have provided. It does not appear, from what you say that the absence of a power to make binding decisions undermines the role of Eurojust in resolving conflicts of jurisdiction. We are pleased to see that relevant statistics are now being collated by Eurojust and we would expect the Commission to pay close regard to such information when assessing the need for increasing Eurojust’s powers and formulating any future legislative proposal in this area.

We have decided to clear the Communication from scrutiny.

18 December 2007

ROME I: LAW APPLICABLE TO CONTRACTUAL OBLIGATIONS (5203/06)

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

I am writing in response to your letter of 19 July 2007 to update you on developments on Rome I, which is held under scrutiny by the Committee.

Working Group Negotiations—Recent Developments

Council Working Group negotiations on Rome I concluded under the Portuguese Presidency on 14 November. Since then, the European Parliament and the Portuguese Presidency have been working together with the aim of achieving a first reading deal. The European Parliament concluded, at its meeting on 29 November, its approval of an amended Commission proposal on the basis of agreement reached in the

Council Working Group. Political agreement to the revised Commission proposal was secured at the Justice and Home Affairs Council on 6–7 December. A copy of the final text is enclosed for information (not printed).

The UK was unable to vote on the final text but we have given it careful consideration to see whether it meets our main concerns. Our assessment at this stage is that the negotiations have led to a good outcome on many of the concerns that we identified at the start of the negotiations. This is important as parts of the Regulation would have significantly affected UK interests whether we opted in to the Regulation or not.

Once the Regulation has been adopted, the UK can elect to opt in at any point with the agreement of the European Commission. Before we take any decision to do so, however, it remains my intention for there to be a period of public consultation with detailed consideration of the contents of the Regulation by the relevant stakeholders. This will of course include consideration of the views of both Parliamentary Scrutiny Committees.

I have set out below a summary of the position on each of those Articles that had been the most contentious and how these were eventually resolved.

**ARTICLE 5 (CONTRACTS OF CARRIAGE) (PREVIOUSLY ARTICLE 4a):**

In her letter of 12 June, Cathy Ashton highlighted the fact that the majority of Member States in the Council Working Group were in favour of a rule governing contracts for the carriage of passengers that would have precluded the application of party autonomy. During later discussions in the Working Group, a number of Member States were persuaded to support the inclusion of a significant degree of party autonomy which will allow carriers to select the law either of:

- the passenger’s habitual residence;
- the carrier’s habitual residence;
- where the carrier has his place of central administration;
- the place of departure or
- the place of destination.

This denotes a significant step forward and meets the concerns expressed by our transport industry about the inadequate availability of party autonomy. This therefore represents a good outcome for the UK.

**ARTICLE 6—CONSUMER CONTRACTS (PREVIOUSLY ARTICLE 5)**

Article 5 of the Commission’s proposal was more favourable to consumers than its equivalent in the Rome Convention. The latter enables businesses and consumers to agree the law to apply to cross-border contracts (in practice, usually the seller’s law) subject to preserving the protective mandatory rules of the country where the consumer was habitually resident—the principle of limited party autonomy. By contrast, the Commission’s proposal envisaged that in principal the law of the consumer’s habitual residence would govern every cross-border consumer contract. A limited number of Member States, including the UK, were concerned about the impact on the operation of the single market of such a rule. Both the e-commerce and small business sectors were concerned that the provision was more likely to impede, rather than support the workings of the internal market. The added difficulty of this provision for the UK was that even if the UK remained out of the final Regulation UK businesses, whenever they traded with consumers in the rest of the Community, would generally be bound by the choice of law provision in Rome I.

Although there was increasing awareness by some Member States that the proposal could give rise to more serious effects on business than was first envisaged, there remained no blocking minority in the Council Working Group even though some Member States strongly advocated the reintroduction of limited party autonomy.

However, the European Parliament were concerned about this provision and were sympathetic to the concerns expressed by the UK and other Member States. Such was their concern that they gave early warning that they would be unlikely to reach agreement with the Council on Rome I unless a different approach were taken on Article 5 and indicated that their preference would be for a provision which established limited party autonomy. In order to achieve agreement with the European Parliament and to prevent conciliation, the Council agreed to concede to Parliament’s view as part of an overall agreed package on Rome I.

As the scope of the Commission’s proposal had been widened to cover goods and services, it was necessary to negotiate a number of exemptions to the consumer provision for financial transactions—Article 6(4)(d) and (e). Such exemptions were negotiated in order ensure the application of a single law for trading systems and in particular regulated markets, multilateral trading facilities and other similar trading systems. The application of a single governing law is an intrinsic feature of organised multilateral trading systems and is
necessary for legal certainty for those who participate in such markets. If exclusions had not been achieved in this area, the resultant effect would have been legal uncertainty.

On “directing activities”, the Commission’s original recital on this point has been retained which reflects the status quo outlined in Article 15 of Brussels I. E-commerce stakeholders have indicated they are content with this.

Overall, an unexpectedly good result has been achieved on this provision which should address many of the concerns expressed by stakeholders.

**ARTICLE 7—INSURANCE CONTRACTS (PREVIOUSLY ARTICLE 5a)**

Agreement was reached to include a pure consolidation of the existing rules on the law applicable to insurance in Rome I, and the various Insurance Directives, with a review clause to facilitate reform in this area at a later stage. This would be with the benefit of a proper impact assessment. This is acceptable to the UK.

**ARTICLE 9(3)—OVERRIDE MANDATORY PROVISIONS (PREVIOUSLY ARTICLE 8(3))**

As you are aware, this provision was the principal reason behind UK’s opt out of Rome I. It represented the greatest single concern for UK commercial interests who heavily criticised it as being likely to create legal uncertainty and unjustifiably restrict the freedom of business to agree the application of a particular law to their contracts. In addition, the UK, along with several other Member States had a reservation on the equivalent Article in the 1980 Rome Convention.

The UK, along with the other Member States with such a reservation, initially sought deletion of this rule. Those Member States who currently use the provision opposed deletion. There was, however, genuine willingness within the Working Group to find a compromise solution between retention and deletion. The rule which has been agreed does not in substance go beyond that currently provided for under English law, i.e. the application of the mandatory rules of a third country in situations where those rules make performance of the contract unlawful in the country of performance.

This is a good result for UK and one that should be acceptable to stakeholders. During the negotiations on this issue, my officials were closely in touch with officials in HM Treasury and representatives of the Financial Markets Law Committee.

**ARTICLE 14—PRIORITY BETWEEN COMPETING ASSIGNMENTS (PREVIOUSLY ARTICLE 13(3))**

The assignment of debts, which is covered by Article 14, is integral to many financial instruments. The rules in this area have to be satisfactory as they are of critical importance to wholesale financial markets. In her previous update to you, Cathy Ashton advised that there was some support for the UK’s position on the problematic issue of Article 13(3) in the Working Group where our preference was for a solution based on the law of the assigned claim. This represents the current position under English law. However, support also remained for the Commission’s proposal and this led to an impasse. Although many attempts were made to seek a compromise between the UK and the Commission’s proposals, no solution could be found which a majority of Member States could accept.

The European Parliament was sympathetic to the UK position. Indeed they had adopted a solution similar to the UK’s in their proposed amendments. However, as no consensus could be reached between the various solutions proposed, it was agreed that Article 13(3) should be deleted. The issue of the law applicable to questions of priority between competing assignments will be subject to an urgent analysis by the Commission, leading, as appropriate, to a new proposal accompanied by an impact assessment.

The deletion of this rule is acceptable to the UK and the extra time for detailed analysis of the most appropriate rule is welcome. A good result has therefore been achieved.

The next stage of the process will be the issue of our consultation document on Rome I, which is likely to take place early in the New Year. As stated earlier, the views of the Scrutiny Committees will also be sought on this.

17 December 2007

**Letter from the Chairman to Bridget Prentice MP**

Thank you for your letter of 15 December which was considered by Sub-Committee E at its meeting on 16 January. In the light of your intention to undertake a public consultation on the Regulation, the Committee decided to keep this matter under scrutiny.
We are grateful for your update and note that negotiation on the Regulation is now concluded. It is pleasing to note that the result of that negotiation has been to improve the provisions on the more contentious issues. We look forward to the opportunity to consider your consultation document in due course.

17 January 2008

Letter from Bridget Prentice MP to the Chairman

I wrote to you on 15 December to inform you that agreement had been reached on the Rome I Regulation at the Justice & Home Affairs Council in December 2007. I also advised that it remained my intention, before any decision was made on whether the UK should opt in to the final Regulation, that there would be a period of public consultation. I am pleased to inform you that the United Kingdom has today published the consultation paper ‘Rome I—Should the UK Opt In?’ The consultation is available online at www.justice.gov.uk/publications/consultations.htm.

As you will know, the United Kingdom did not opt in to the Rome I Regulation because of serious concerns about aspects of the European Commission’s original proposal. However, we participated fully in the negotiating process with the intention of securing improvements to the original proposal that would then enable the UK to opt in.

I believe that such improvements have been made and that the final text of the Regulation protects the benefits of the existing Rome Convention and in some areas represents an improvement upon it. The Government is therefore recommending in the consultation paper that the UK should now seek the permission of the European Commission to opt in to the Regulation. The consultation will end on 25 June, and the Government will make a final decision after analysis of the responses. We hope, therefore, to be able to announce our final position in July.

As Rome I touches upon UK-wide issues, the devolved administrations in Northern Ireland and Scotland were involved throughout negotiations and in the drafting of the consultation paper. We are also grateful for the comments of the House of Commons and House of Lords European Scrutiny Committees throughout the negotiations on Rome I.

2 April 2008

RULES OF PROCEDURE OF THE ECJ (5952/08, 5953/08)

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

These proposals have been considered by Sub-Committee E.

We welcome the proposals to flesh out the detail of the review procedure before the ECJ. We particularly support the incorporation of a number of deadlines and, while we consider the Advocate General’s Opinion to be an important part of the ECJ process, recognise the need for some flexibility here to ensure that the procedure is completed as quickly as possible.

We have decided to clear the proposals from scrutiny.

25 March 2008

STATISTICAL ADVISORY BOARD (14240/06)

Letter from the Chairman to Angela Eagle MP, Exchequer Secretary, HM Treasury

Thank you for your letter of 31 October 2007 which was considered by Sub-Committee E at its meeting of 21 November 2007.

We are pleased to see that changes agreed address the Government’s concerns. In particular we welcome the amendment to the procedure for appointing the Chair of the Board.

We have decided to clear the proposal from scrutiny.

22 November 2007

Correspondence with Ministers, 11th Report of Session 2008-09, HL Paper 92, p 240.
SUCCESSION AND WILLS (7027/05)

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

Thank you for your letters of 25 October\(^{19}\) and 8 November 2007 respectively setting out the Committee’s conclusions following its meeting on 10 October with Professor Jonathan Harris of Birmingham University and one of my officials; and enclosing a copy of your Report on the Succession and Wills Green Paper.

I am grateful for the Committee’s careful consideration of the issues raised in Professor Harris’s draft paper and its detailed comments on them. And I look forward to considering the substance of your new Report. The work you have done will be very helpful to the Government in preparing the proposed paper for the Commission, which will set out the approach that we consider the Commission should adopt in preparing a draft instrument in this area. I will keep you informed of developments and will, in any event, let you know how matters stand by 5 February. I will, of course, also provide you with a copy of the paper sent to the Commission.

12 December 2007

Letter to the Chairman from Bridget Prentice MP

I refer to my letter of 12 December 2007 and am pleased to enclose the Government’s paper to the Commission on the issue of the scope of the legislative proposal on Succession and Wills. I also enclose a copy of our second paper addressing issues of content which I have today sent to the Commission.

I am sorry for the slight delay in sending this more substantive response but in light of the complexity of the issues, the timing of the Half Term recess, and the need to liaise fully with colleagues in the devolved administrations, I hope that your Committee’s consideration will not suffer as a result.

6 February 2008

ANNEX I

THE EUROPEAN COMMISSION GREEN PAPER ON SUCCESSION AND WILLS

A UNITED KINGDOM PERSPECTIVE ON THE SCOPE OF A POSSIBLE REGULATION: KEY POINTS

Part A—Introduction

1. This paper follows the earlier paper sent by the UK to the European Commission in December 2007. The latter was primarily concerned with the scope of the Commission’s forthcoming Regulation in this field. This paper addresses issues relating to the content of that instrument. The proposals put forward rest on the assumption that our recommendations on the Regulation’s scope are reflected in the text of the instrument. Our recommendations on scope were as follows:

   — The Regulation should be confined to “pure” succession issues and should not affect the law relating to the process by which the property of the deceased passes to his or her heirs, or the transfer and registration of rights to immovable property.

   — The Regulation should only apply where the principal subject matter concerns succession rights to the deceased’s estate.

   — The Regulation should therefore not apply to interests that terminate on death, such as life interests and joint tenancies.

   — Valid gifts or dispositions at an under-value made by the deceased during his or her lifetime should not be negated by the operation of a foreign law of succession. The choice of law rule governing the original transaction should be fully respected and not be unsettled by the application of the subsequent choice of law rules of the lex successionis.

   — The recognition of trusts and property rights that are unknown in the Member State asked to recognise them as such should not fall under the Regulation; these are not matters of succession law properly so called.

\(^{19}\) Correspondence with Ministers, 11th Report of Session 2008–09, HL Paper 92, p 241.
Part B—Issues Relating to Choice of Law

The Underlying Principle

2. The laws of the UK currently adopt a scission-based approach, whereby succession to movables is governed by the law of the deceased’s domicile (in the common law sense of that concept) at death; and succession to immovables by the lex situs.

3. However the UK recognises that there would be advantages in subjecting succession to a single law. For estate planning purposes, there are benefits for a testator in knowing that a will will be effective and reflect his or her wishes as to the division of the estate, even in respect of foreign immovables. Further, the present scission-based approach can produce complexity and in some cases anomalous results. Such an approach is inconsistent with the fact that the great majority of countries around the world now operate a single system of intestate succession for all kinds of property.

4. In the light of these considerations the UK would be prepared in principle to support a unitary approach as a suitable choice of law rule. However our flexibility on this issue is subject to an important condition, namely that the Regulation reflects the UK’s positions as set out in paragraph 1 above. In particular it is important that a national court should not be required to recognise, as such, foreign property rights relating to immovable property situated locally, which are unknown under its local law.

The Definition of The Connecting Factor

5. The UK considers that any uniform choice of law rule in the Regulation should be based on some concept of residence. In the absence of a choice of law by the testator, the devolution of the estate is very likely to be most closely connected with the country where the testator is resident at the time of his or her death. It is at that stage that the connecting factor should be determined. Such a connecting factor would appear to be equally appropriate to cases of testacy and intestacy.

6. We are not persuaded that a deceased’s nationality has a necessary connection with the deceased’s estate at death and how it should devolve. Such a criterion suffers from various general problems, such as dual nationality (one of which might be purchased) and, in the case of states with more than one jurisdiction, the allocation to the relevant jurisdiction. It should not be adopted in the context of the rules that should regulate choice of law issues. Nationality may have very little connection to the testator at the time of making the will or at death and is difficult to apply to nationals of states with more than one jurisdiction, like the UK, because it does not always result in the selection of a single legal system.

7. A suitable test of residence should be autonomous in order to ensure its uniform application. Its precise terms will need to be formulated with great care in order to ensure that it produces appropriate results. A simple reference to the deceased’s habitual residence, with no further guidance given as to how that would apply in practice, would not create sufficient legal certainty. In addition, there could be other problems with such a simple reference: for example, habitual residence can in some instances be changed with great rapidity or an individual may be found to have no such residence, or an individual may be found to have more than one habitual residence concurrently.

8. The definition of residence should focus on the centre of an individual’s activities. The UK invites the Commission to consider as appropriate elements of such a definition the following hierarchical scheme:

- The law of the country in which the deceased has a permanent home available to him or her at the time of death.
- If he or she has permanent homes in more than one country, or in none, then the applicable law should be that of the country in which he or she has an habitual abode (which might be defined by reference to where he or she spent the most time in, for example, the year before his or her death).
- If he or she has permanent homes in more than one country, or in none, and has an habitual abode in more than one country, or in none, then the applicable law should be that of the country with which his or her personal and economic relations are closest.

9. Furthermore, a rule of displacement should be added to deal with cases where the general definition of residence would not produce satisfactory results. An example would be the case of a Spanish car-worker, who, for work reasons, lived in Germany for three years before his death, but who intended to return to his native Spain where his wife and family remained. In such a case it would appear more appropriate to apply Spanish law rather than German law. Such cases might be adequately covered by a rule of displacement in the following terms: “if the deceased was manifestly more closely connected to another state where he or she has previously resided”.

The Freedom To Choose The Applicable Law

10. The UK is supportive of some degree of party autonomy in the law of succession. This reflects the principle of freedom of testamentary disposition that underlies our law. Further, it is conducive to legal certainty and can operate to avoid litigation, particularly in cases where it may be difficult to locate an individual’s place of residence with any certainty.

11. However, we recognise that party autonomy needs to be properly circumscribed in view of the fact that that freedom is generally not broadly sanctioned in the area of succession and wills. In addition, questions of succession raise important issues of social policy most naturally connected with the state where the deceased is resident at the time of death or where the property is located. It would not seem desirable that the laws of Member States on, for example, compulsory heirship or discretionary judicial family provision could readily be circumvented by a choice of law providing no family protection.

12. In the light of these considerations, we consider that the testator should be able to choose between the application of the relevant connecting factor (i.e. residence as defined above) either at the time of making the will or at the time of his or her death. Both these choices should ensure the application of laws with a significant connection to the case. The availability of this choice reflects the fact that a will is the product of the unilateral intention of the testator and that his or her wishes should, where possible, be given effect. Also, since the will is to be construed against the background of the testator’s “home” law at the time of making it, and since it is likely that the beneficiaries of the estate of the testator will have some connection with the testator’s state of residence at the time of making the will, there is sufficient connection to justify this choice.

13. In the context of the general connecting factor for choice of law purposes we expressed concerns about the appropriateness of nationality as a criterion (paragraph 6). In principle those concerns also apply in the context of the parties’ freedom to choose a law. However, there may be circumstances in which, subject to suitable conditions, it would be appropriate to explore the possibility of using nationality as a criterion in combination with some other connecting factor which would ensure that the testator has a sufficient connection with that state to justify a choice or common law domicile.

14. On the basis that a unitary principle is adopted in relation to choice of law, the availability of this limited degree of party autonomy should apply in relation to both movable and immovable property. As regards the latter, we could accept an additional choice, namely that the testator should be permitted to choose the lex situs in respect of such property. This further choice would reflect the particular connection between such property and the territory where it is situated.

The Position in Relation To “Intra-Member State” Cases

15. The Regulation should not apply to purely “intra-Member State” cases. These may arise in relation to any Member State (such as the UK) which comprises several jurisdictions with separate systems of law in this area. Where the law of such a Member State is available under the Regulation’s rules on party autonomy, it should be left entirely to that law of that Member State to determine the circumstances in which the testator can elect between the laws of the different internal jurisdictions. This issue arises not only in relation to choice of law but also generally; it is fundamental that the scope of the Regulation should be properly limited in this respect.

Renvoi

16. Our starting point is that simplicity suggests that the exclusion of this doctrine would in principle be desirable. In any event where the applicable law under the Regulation is that of a Member State the doctrine should be excluded. However, if the applicable law is that of a non-Member State, then the doctrine might usefully be preserved on the basis that it would increase the application of the law of Member States and produce uniformity of outcome between Member and non-Member States. Otherwise, the devolution of deceased’s estate could be determined differently in the courts of a Member and a non-Member State.

Capacity

17. We consider that the Regulation should cover this issue and that a testator’s capacity to make a will should be assessed at the time when the will is made and therefore under the law of the country where he or she was resident at that time. At that point, if the testator had capacity, then, in the absence of some strong reason of public policy, the lex successionis should not subsequently invalidate the will on the basis of a lack of capacity under that law.

18. A further issue is whether a testator who lacks capacity by the law of his or her residence at the time of the execution of the will should have the will validated if he or she dies resident in a state under whose law he or she has capacity. In our view capacity should be assessed only at the time of making the will. A testator who
was a minor according to the law of his or her residence at the time of execution, or who then lacked mental capacity, did not create a valid will under that law. Such a testator might reasonably assume that the will was not valid. In such circumstances, and in the absence of another will, another law should not be able to determine that the testator did after all have capacity and validate the will.

Formal Validity

19. We propose that a will should be valid as to form if it satisfies the law of the place of execution or the state of the testator’s nationality, domicile or residence, either at the time that the will was made or at the time of death, or, in relation to immovables, the law of the place where they are situated. This is the rule under the 1961 Hague Convention (on the form of wills) and it has worked well in practice. We consider that the Regulation should adopt rules consistent with the Convention. We think it would be helpful if the Commission were to encourage ratification of the Convention by all Member States.

Interpretation

20. The law intended by the testator should govern the interpretation of a will. This is because it is ultimately a matter of construction of what the testator meant. There might usefully be a presumption that this should be the law of the residence of the testator at the time when the will was executed.

Forfeiture

21. This should in principle be a matter for the lex successionis. But since it may raise questions of public policy, for example the extreme case of the spouse or child causing the death of the deceased, this should be subject to the rule of exception relating to public policy.

Revocation

22. Consideration should be given to the precise factor that is alleged to have revoked the will. If it is alleged that the will was revoked by marriage, then the applicable matrimonial law should determine this matter, rather than the lex successionis. Accordingly the effect of marriage on the validity of a will should fall outside the Regulation. If it is alleged that a first will is revoked by a second will, the law applicable to the second will should apply. Where a will is allegedly revoked by a particular act, such as tearing it up or burning it, it is proposed that the law of the testator’s residence at the time of the act should determine whether the will is revoked. This rule would be consistent with legal certainty and the approach recommended in relation to capacity. The testator should be able to determine at the time of acting whether the revocation is effective; and the will should not be revalidated if the testator then dies resident in another state under whose law the revocation is ineffective, since that could well defeat the testator’s expectations.

Commorientes

23. In our view succession issues arising in cases of simultaneous deaths should be treated as a matter of substantive succession law, and not as a matter of procedure or evidence. This is because the issues ultimately relate to the question of entitlement to the estates of deceased persons and not merely to the manner of proving the existence of those rights. The general principle should be that the Regulation should confine itself to matters of private international law and not lay down uniform rules of law. Consistent with this approach, we recommend that, if the same law is applicable to the succession of both parties, that law should determine the matter. Similarly if two laws are potentially applicable but reach the same conclusion, that result should be applied.

24. We propose one limited residual rule of uniform law that is based on Article 13 of the 1989 Hague Succession Convention. This would be that, where different laws are applicable to the two deceased persons and they reach different conclusions as to what should happen in the event of simultaneous deaths, none of the deceased persons should have any succession rights to the other.

Ownerless Property

25. It may be helpful to outline the current system under UK law for dealing with ownerless property. Under English law, a senior Government official, the Treasury Solicitor, is authorised to collect such property, known as bona vacantia, in England, Wales or Northern Ireland. The Treasury Solicitor does not claim assets situated abroad even if they were owned by a British national domiciled here whose estate has fallen to the Crown as bona vacantia. This is because the Crown is entitled to ownerless property by right of sovereignty and not as successor heir to the deceased’s estate. The Crown will claim the property situated here of a foreign national dying intestate without any blood relations. However, that claim may well be defeated if, under the law of the
country where the foreign national was domiciled, some other authority, usually the State, is entitled as heir. In Scotland the deceased’s estate goes to the Crown as ultimus haeres. The Queen’s and Lord Treasurer’s Remembrancer takes possession of the estate without obtaining confirmation. He will realise the assets, including those held abroad. He will advertise estates, with a value greater than £2000 for possible relatives. He will then pay the debts and if no relatives are found the balance goes to the Treasury.

26. We invite the Commission to consider adopting a similar approach for choice of law purposes under the Regulation. It should be for the lex successiones to determine whether a state is to be treated as an heir of the property and, if so, it should be able to claim the property. To the extent that there is no such heir under that law, however, the question of whether a state should be able to claim ownerless property in the exercise of its sovereign powers should be a property law matter for the lex situ. Such an approach would reflect the territorial ambit of sovereign powers and the compromise in Article 16 of the 1989 Hague Succession Convention. This provides that it does not preclude the state where the property is situated from appropriating assets of the estate that are situated in its territory as an exercise of sovereignty.

Mandatory Rules and Public Policy

27. A public policy exception to the choice of law rules in the Regulation is essential. It should be limited to the public policy of the forum and should only apply where the applicable law is manifestly incompatible with the law of the forum. Similarly there should be a provision preserving the overriding mandatory rules of the forum. There should be no power to give effect to the mandatory rules of any third state.

Part C—Issues Relating to Jurisdiction

The General Rule for Movable Property

28. We should emphasise the importance of ensuring that the rules of jurisdiction in the Regulation should not affect the competence of national courts in Member States in relation to the administration of estates. These matters should remain subject to the lex fori. We envisage that the jurisdictional rules in the Regulation should only apply to jurisdiction in relation to “pure” succession issues, such as where a dispute arises between, for example, a personal representative and a beneficiary of an estate as to the entitlement to particular assets. The rules should only operate to vest jurisdiction in the courts of Member States.

29. We recommend that the general rule should vest jurisdiction in the courts of the state where the deceased was resident at the time of death. This would accord with our proposed general choice of law rule (see paragraph 4 above). Given the close social policy link between succession laws and the state in which they operate, it is highly desirable to ensure in general the lex fori is applied.

Additional General Bases of Jurisdiction

30. The UK considers that in addition to the general rule of jurisdiction there should be further additional jurisdictional bases to the extent that each of these can be justified on their own merits. An analogy for this can be found in the Brussels I Regulation where the general rule in Article 2 is supplemented by the additional rules in Article 5. An appropriate balance needs to be struck between competing objectives. On the one hand, in the interests of justice there should be sufficient grounds to facilitate the bringing of claims in fora with an adequate connection to the dispute. On the other hand, there should not be an excessive number of grounds because that would lead to a fragmentation of jurisdiction and be likely, to impede the proper administration of justice.

31. One additional basis of jurisdiction would appear to be justified: this would reflect those cases where the testator has exercised his or her freedom to choose an applicable law under the Regulation, but has not made any choice in relation to jurisdiction. For example where the testator has selected the law of his or her residence at the time of making the will, the courts of that state should have jurisdiction. But this should be without prejudice to the jurisdiction of the courts of his or her residence at death, since a personal representative may be appointed in such a state, who should appear in the proceedings.

32. Consideration should be given to another possible additional basis of jurisdiction that would be designed for disputes that are principally concerned with an issue to which a law other than that of the deceased’s residence is applicable. Proceedings of this kind might concern the testator’s capacity, the interpretation of a will or an act of revocation. For such cases the courts of the state whose law is applicable should have jurisdiction.

33. Another possible basis of jurisdiction would reflect the fact that some disputes between alleged beneficiaries of an estate or between a beneficiary and a personal representative might have relatively little connection with the state where the deceased was resident at death, such as a dispute about the nature and
extent of rights of persons under the will. In the light of this it might be appropriate to confer jurisdiction on
the state where the respondent is resident. This would reflect Article 2 of the Brussels I Regulation.

34. Finally, and consistently with our policy of allowing limited party autonomy in relation to choice of law,
it seems appropriate to allow the testator a limited choice as to jurisdiction, whether exclusive or non-exclusive,
as between the grounds referred to in paragraphs 31 to 33.

Jurisdiction in Relation to Proceedings Involving Immovable Property

35. It is important that disputes that have as their object rights in rem in immovable property should be
capable of being heard in the state where the property is situated. Accordingly, where the proceedings are
principally concerned with these rights, jurisdiction should be vested in the courts of that state. This would
reflect the policy inherent in Article 22(1)(a) of the Brussels I Regulation, namely that such rights need to be
enforced in that state which has sole control over the immovable property. However, in the present context,
the jurisdiction need not necessarily be exclusive, provided that the scope of the Regulation is properly limited
to pure succession issues and issues relating to the transfer of rights in immovables fall outside that scope. In
any event, where the dispute is not principally concerned with rights in rem in immovable property, it is
proposed that the claimant should be given a choice between the courts of the place of the deceased’s last
residence (or any other court having jurisdiction by virtue of the rules proposed in paragraphs 28–34) and the
courts of situs of the immovable property.

36. It is proposed that the Regulation should stipulate that no court within the EU should be able to assert
jurisdiction over proceedings that are principally concerned with rights in rem in immovable property located
in a non-Member State. Such a court will have no effective control over a case of this kind and any judgment
that it might give may well be unenforceable in that non-Member State.

37. It is further proposed that in cases where the applicable law is that of a non-Member State, and the
defendant is resident in such a State, the Regulation should provide that generally no Member State has
jurisdiction. A provision of this kind is necessary to ensure a uniform approach in all matters falling within
the scope of the Regulation. However, this exclusion should not apply in a case where the will deals with
immovable property located within a Member State; in such a case there should remain a basis of jurisdiction
vested in the courts of that State.

38. We proposed in our earlier paper that proceedings concerned with the transfer of the deceased’s assets or
the registration of rights in immovable property should fall outside the scope of the Regulation. On this basis
the Regulation should not provide any ground of jurisdiction in relation to such proceedings.

The Transfer of Proceedings

39. We propose that there should be no general right to stay proceedings by analogy with our doctrine of
forum non conveniens. Instead, a lis pendens rule modelled on Article 27 and 28 of the Brussels I Regulation
would appear to be appropriate. Nevertheless the range of issues that might arise in the succession context,
and the fact that some courts with jurisdiction might be ill-equipped to hear proceedings, suggests that a
limited discretion should be considered by which cases could be transferred from the courts of one Member
State to the courts of another Member State. This would allow for the transfer to a court that would apply
the lex fori, where this is not the court seised and where a complex point of law is at issue or a complex judicial
discretion is to be exercised. It would also allow for the transfer of proceedings to a state where the heirs and
assets are located which is other than the deceased’s state of residence. Any such transfer should only occur
at the start of proceedings.

Provisional Measures

40. Finally, as to provisional measures, it should be possible to apply to the courts in a Member State where
property is located for such measures where proceedings are pending in a Member State. The measures should
be directed to the preservation of the estate and support the main succession proceedings.

Jurisdiction in Relation to Testamentary Trusts

41. It is clear from the Schlosser Report on the 1968 Brussels Convention (in paragraph 52) that that
convention, and now the replacement instrument, the Brussels I Regulation, exclude certain questions. These
are, the question of whether the will in which a trust is contained is valid and questions concerning the
administration of the will. By contrast, once the succession process has been completed by the deceased’s
property passing to the appropriate persons, a claim by the beneficiary of a testamentary trust against a trustee
for breach of trust which might arise soon or many years after the winding up of the testator’s estate, must
fall within Brussels I. Moreover, since inter vivos trusts clearly fall within the scope of Brussels I (see Articles
S(6) and 23(4)), and since, once the trust is operating, its origin is essentially irrelevant, there is no reason for suggesting there should be any different jurisdiction rules for testamentary trusts in the Regulation. To do so would create an unjustified distinction between _inter vivos_ and testamentary trusts. In the view of the UK the Regulation should not contain rules of jurisdiction relating to trusts or to foreign property rights unknown in UK law. Indeed, the position under the Brussels I Regulation only serves to emphasise that trusts law and succession law are different matters and need to be carefully distinguished when the scope of the Regulation is determined.

**Part D—Issues Relating to The Recognition and Enforcement of Judgments**

42. The UK is generally willing to recognise and enforce court judgments. However, consistent with our concerns about the scope of the Regulation, we would be concerned about the recognition of foreign judgments that would automatically result in either the appointment of a personal representative or the vesting of property directly in the heirs of the deceased. However, as we indicated in paragraph 7 of our first paper, we are open to exploring other possibilities for the mutual recognition of personal representatives.

43. The UK does not have a notarial tradition and would in principle oppose an obligation to recognise the status of non-judicial authorities, succession related deeds or the acts of notaries.

44. Subject to these caveats, a court ruling as to, for example, the beneficiaries of the estate or the interpretation of the will could, in principle, be recognised in the UK. However, it should be possible for expert national courts to assess whether a foreign decision is contrary to the public policy of the forum. In the event that the Regulation provides a unitary choice of law rule in favour of the law of the deceased’s residence, the courts of the _situs_ of immovable property should be allowed to satisfy themselves that the judgment is neither contrary to public policy nor incapable of being enforced in that state before recognising and enforcing it. The Regulation should provide rules for dealing with irreconcilable judgments. There should also be a procedure equivalent to _exequatur_ under the Brussels I Regulation.

**Part E—Issues Relating to a Certificate Of Inheritance**

45. The UK has reservations about the proposal that the Regulation should deal with certificates of inheritance and is unclear about the precise nature of the certificates proposed. Our courts currently issue grants of representation relating to the powers of administrators or executors, but not broader certificates of inheritance. Under our laws such certificates of inheritance would be treated as evidence of a particular fact or situation and not _per se_ conclusive.

46. There would be likely to be significant problems for a court in the UK or any other authority here in issuing such certificates. The length and form of English wills do not lend themselves to such a certificate. The grant of probate will attach a copy of the will, which may be very lengthy and technical. Furthermore, the grant of probate or administration in England and Wales cannot be granted until inheritance tax liabilities have been settled. The proposed certificate could not require asset holders to hand over assets without the tax issues first being resolved. This may take several months, which may cause practical problems in relation to the issue of such certificates in the UK.

47. We believe that a certificate of inheritance should not be treated as conclusive as to the assets of the estate. We consider that it could be of persuasive value only if the Regulation makes clear that assets validly disposed of _inter vivos_, by gift, trust or otherwise, did not form part of the estate. Otherwise, there is risk that the issues of scope identified in our first paper would become problematical as a result of such certificates purporting to include such assets in the deceased’s estate.

48. Our view is that any certificate should not entitle the interests of the parties stated therein to be registered in the UK automatically. However, we are open to exploring the potential evidential value of a certificate that provides evidence as to the law applicable to the succession, the beneficiaries of the estate and the administrator appointed overseas and their powers. Finally, it would be much easier to give probative value to documents issued by courts, rather than by notaries or non-judicial bodies.

**Part F—Issues Relating to a Register Of Wills**

49. The UK is willing to explore the possibility of establishing of a voluntary register of wills along the lines set up under the Basle Convention. In the UK an important consideration is that testators may well wish to keep the contents of their wills private and are fully entitled to do so. There would be strong public policy reasons for not giving heirs presumptive information about the wills of living person over whom they might exert undue influence. If such an optional register is to be set up, it should contain only details of the existence of wills and not their contents. Even then, there would also be issues about when access to it should be permitted, and by whom. The safest course would be to allow access only after the testator’s death.
Part G—Conclusion

50. On the assumption that the scope of the proposed regulation is properly delineated, as specified in our earlier paper, the UK believes that the rules we have proposed will significantly improve the position of citizens involved in cross-border successions. The UK looks forward to working with the Commission and other Member States to achieve this objective.

ANNEX II

EUROPEAN COMMISSION GREEN PAPER ON SUCCESSION AND WILLS

A UNITED KINGDOM PERSPECTIVE ON THE SCOPE OF A POSSIBLE REGULATION: KEY POINTS

Part A—Introduction

Summary

1. The UK is looking forward to the publication of the Commission’s proposal on succession and wills. An appropriate Regulation on this topic would bring real benefits to citizens in all Member States. To achieve this, we consider the scope of the Regulation must be appropriately restricted to succession law issues only. This is the most important issue for the UK.

2. We believe the Regulation should only be concerned with the question of who gets what as a consequence of a death. It should not select the law governing the process by which the property of the deceased passes to his or her heirs. This approach will enable the appropriate law to be applied to the succession, whilst ensuring that national administrative, legal and tax systems will not be disrupted. It will also ensure that valid gifts and other dispositions made in the lifetime of the deceased are not negated by the operation of a foreign law of succession. Our objective in this paper is to explain the reasons why the UK thinks that this approach is the best way forward.

3. If the scope of the Regulation is appropriately defined, then, subject to necessary qualifications, the same choice of law rule could be used for movable and immovable property. This significant change for the United Kingdom would make it possible to advise citizens about their estate by reference to a single law.

4. We are carrying out further work on the adoption of a unitary approach, and on the other issues raised in the Commission’s Green Paper, particularly those relating specifically to jurisdiction, mutual recognition and enforcement, the European Certificate of Inheritance and the Register of Wills. We hope to be in a position to offer the Commission another paper on those issues early in 2008. Whilst there are several significant issues to be discussed in relation to these other important matters, we do not consider that they raise issues of the same overall significance as the issue of scope discussed in this paper.

Background

5. In 2006 the UK replied to the European Commission’s 2005 Green Paper on Succession and Wills. The reply drew attention to the need to respect the differences between the legal traditions of Member States in this area. The following comparisons illustrate the depth of this diversity:

   — some Member States, such as the UK, favour freedom of testamentary disposition, whilst others provide for reserved heirship (otherwise known as forced heirship);
   — some Member States allow property to pass direct to the heirs, but the UK and others operate a court based system, which, on the death of the deceased, gives ownership of the deceased’s property to a third party, who owns the property as a personal representative, while he or she administers the estate;
   — some Member States, including the UK, define the estate as the property of the deceased at the date of death, others include property given away by the deceased during his or her life; and
   — some Member States apply a unitary system of applicable law rules, others, such as the UK, apply the principle of scission, so that different rules apply to movable and immovable property.

6. Following its response, the UK offered the European Commission a further paper explaining in more detail how some of the possible approaches to this Regulation might impact on common law jurisdictions, such as those in the UK, and possible alternative approaches.
7. We hope that these papers will form the basis of a constructive dialogue. For the purposes of this paper, we have assumed that the treaty base for the Regulation will be article 65 of the EC Treaty. We have also assumed that there will be a satisfactory impact assessment demonstrating that a Regulation is an appropriate and proportionate response to the problems caused by the present law.

8. Finally, we note that in general terms the Hague Convention on the law applicable to Trusts and their Recognition (1985) and the Hague Convention on the law applicable to succession to the estates of deceased persons (1989) properly delineate the two subject areas of trusts and succession from one another. We have, where appropriate, drawn inspiration from them.

Structure of Paper

9. In Part B we discuss the scope of the proposed Regulation. In Part C we consider the definition of the "estate" of the deceased, paying particular attention to the operation of "clawback" provisions in the legislation of Member States. Part D sets out a brief conclusion.

Definitions

10. The UK consists of long-established and separate jurisdictions: England and Wales, Scotland and Northern Ireland. Each has its own law of succession, its own courts and administrative systems, including land registries. References to the UK refer to the UK as a whole.

11. “Succession” refers to the decision as to who is to inherit what under the will or the intestacy rules. It does not include the administration and distribution of the estate (usually referred to simply as “administration”). “Administration” in this context includes identifying and appointing the personal representative, collecting in the estate of the deceased, paying inheritance tax and the debts of the deceased, and distributing the net estate to the persons entitled, whether directly or to trustees to hold on their behalf.

12. We refer to the Hague Conventions mentioned in paragraph 8 as the “Trust Convention” and to the “Succession Convention” respectively.

Part B—Scope of the Regulation

Succession

13. The scope of the Regulation is the key issue—for the UK. In our view, there must be an acceptable definition of “succession”. The proposed Regulation should apply only where the principal subject matter in issue concerns succession rights to the deceased’s estate. The fact that a dispute arises in the succession context does not necessarily mean that it should be treated as a succession matter within the meaning of the proposed Regulation. This is consistent with the Jenard Report to the Brussels Convention, which notes that succession matters fall outside the scope of the Brussels Convention only if they constitute the principal subject of the proceedings.

Administration of Estates—UK Law

14. As the UK explained in its response to the Green Paper, the process of the administration of the estate of the deceased is to be distinguished from issues of succession.

15. In the UK, on the death of the owner, the property in his or her estate is vested in a personal representative appointed by the court, who will deal with outstanding liabilities before distributing the estate. The role of the court is administrative, except in those few cases where there is a dispute.

16. In England and Wales, a personal representative is called an executor (if named in a will) or an administrator (if not). An executor requires a grant of probate and an administrator requires a grant of letters of administration to act. Any English grant vests all property located in England in the personal representative and also any movables once brought into the jurisdiction if not vested in another person by the lex situs first. The situation is similar in Northern Ireland.

17. In Scotland, the method of transfer of property to executors follows similar procedures to those applying in England and Wales. A Confirmation is obtained from the court, which formally appoints executors to administer the estate. In addition, the Confirmation vests or transmits the deceased’s property, both heritable (real) and movable (personal) to the executors for the limited purpose of gathering in and distributing the estate. The executors are either nominate (i.e. appointed by the deceased’s will) or executors-dative (i.e. appointed by the court, typically where the deceased died without a will).
Administration of Estates—Implications of Vesting Direct in Heir

18. In our view vesting a property direct in an heir, as occurs in many other Member States, would be incompatible with this system for several reasons. First, because third parties will expect to deal with a personal representative and have designed their systems accordingly. Secondly, and perhaps more importantly, creditors, including national tax authorities, have their interests protected by the personal representative. The debt does not generally pass to the heir. This is not, we understand, necessarily the situation in systems under which the property is vested in the heir directly. Thirdly, our substantive law requires the personal representative for the purpose of passing title to the heir.

Administration of Estates—Proposal

19. In our view, it is important that the Regulation should state that it does not apply to the process by which property is transferred to the beneficiaries of the estate. This would ensure that the right of the heir to inherit property in one Member State under an applicable foreign law would be recognised. It would also ensure that a direct vesting could not take effect within a Member State, whose law required the property to be vested in a personal representative before it could be transferred to the heir. This would preserve the integrity of the systems of dealing with property and registering ownership within such a Member State. This approach would also ensure that Member States were not required to recognise an appointment of a personal representative that would not have been permitted under their own law.21 It would, however, not preclude practical measures to facilitate the assimilation of heirs or personal representatives from one Member State into the system of another Member State.

20. Restricting the scope of the Regulation to “succession” would also properly exclude questions as to the admissibility of debts and their order of collection and disputes between creditors of the estate.

Property Interests Created or Transferred Outside Succession

21. In deciding the scope of application of the Regulation, it is important to consider the definition of the “estate” under different national laws.

22. The UK would wish to exclude from the succession to which the Regulation applies interests that terminate upon death, such as a life interest in property, because the deceased’s interest no longer exists.

23. The UK would also wish to exclude interests that pass outside the process of succession. In particular, the concept of joint tenancies is important and must be preserved. In England, all cases of co-ownership of land operate on this basis. The joint tenants together own the property and, when a joint tenant dies, his interest is absorbed by the other joint tenants. Where the penultimate joint tenant dies, the surviving tenant becomes absolute legal owner.22 These are fundamental rules of English property law. In this respect, we would also wish to exclude informal gifts where the deceased had represented to another person during his lifetime that he would have an interest in immovable property and the latter had in a sufficient way relied on that promise.23 On this topic, inspiration might be drawn from Article 1(2)(d) of the Succession Convention, which excludes “Property rights, interests or assets created or transferred otherwise than by succession, such as in joint ownership with right of survival, pension plans, insurance contracts or other arrangements of a similar nature”.24

Trusts and Succession

24. As it is commonplace for a will to leave property to X and Y to hold on trust for A and B, it is important that the boundary between succession issues and trust issues should be properly understood. Otherwise, the scope of the Regulation will not be restricted to succession matters and it will cease to have an appropriate scope. Article 15 of the Trusts Convention recognises the difference:

“The Convention does not prevent the application of provisions of the law designated by the conflicts rules of the forum, in so far as those provisions cannot be derogated from by voluntary act, relating in particular to the following matters—

(d) the transfer of title to property and security interests in property; . . .”.

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20 E.g. custodian trustees, registrars of company shares or HM Land Registry.
21 For example, in England, letters of administration will not be granted to one person only where the beneficiary is under 18 years of age (and therefore a legal minor). Nor can a grant be made to more than four persons jointly.
22 We refer to legal owner because the property may still be held on trust for persons who were not themselves joint tenants.
23 In English law these gifts are given effect by doctrines, such as constructive trust or proprietary estoppel.
24 The proceeds of pension plans, insurance contracts and similar arrangements do not generally form part of the estate.
25. We would also draw attention to the key distinction that must be drawn between the will, by which the testator leaves property on trust; and the terms of the trust itself, its validity, effects, administration and recognition. This distinction is fully recognised in the Trusts Convention, which is applicable to the operation of the trust itself but not to the preliminary acts by which the property is vested in trustees (Article 4). As von Overbeck states in the Official Report on the Trusts Convention: “the law designated by the Convention applies only to the establishment of the trust itself, and not to the validity of the act by which the transfer of assets is carried out.”\(^{25}\) We consider that the Regulation should draw the same distinction.

Recognition of Trusts

26. In our view such recognition of trusts should properly fall outside the Regulation, and should rather fall under the Trusts Convention. We consider that wider international recognition should be seen as a beneficial development and we would urge the Commission to encourage the ratification of this Convention by Member States.

27. Our approach would avoid creating an unjustified difference in treatment between, on the one hand, \textit{inter vivos} trusts and, on the other hand, testamentary trusts. Once they come into force, all trusts are in principle of the same nature and should be subject to the same regime of international recognition.

28. Failing clearly to limit the scope of the Regulation to “pure” succession issues\(^{26}\) would mean that Member States would have to recognise and give effect to trusts \textit{qua} trusts. This would mean that if property in a Member State is left to A in a will on trust for B and C, the relevant Member State would need to find a way to recognise the trust and the beneficial interests of B and C as such. This would entail, for example, excluding the assets from A’s property in the event of his or her marriage or bankruptcy. Similarly, if a will contained a discretionary trust, which gave the trustee the discretion to distribute the trust property amongst a group of persons specified by the testator, but compelled him to exercise the discretion, the Member State would have to give effect to that trust. This is notwithstanding the fact that hardly any Member States have previously been willing to do this by ratifying the Trusts Convention.

Recognition of Foreign Property Rights

29. Trusts are only one example of property interests that do not exist in all the Member States. It is most unlikely, for example, that the United Kingdom could in practice give full effect to foreign property rights such as, for example, a usufruct or a tontine. Other Member States, which essentially treat leases of land as contracts, may, for example, have similar difficulties with English leases of land, which create an interest in land binding on third parties. We think it unreasonable and unrealistic to expect that the Regulation should require that the Member States should automatically recognise foreign rights of this kind, register them and give full effect to them within their own legal systems. This would take the scope of the Regulation far beyond succession and be likely to create insuperable problems. Not only would it represent an unwarranted intrusion into the very different systems of land law among the Member States, it would also conflict with Article 295 of the EC Treaty, according to which “the Treaty shall in no way prejudice the rules in Member States governing the system of property ownership”.

30. An extension of the scope of the Regulation to include giving effect to foreign property interests would also create an unjustified difference in treatment between transfers of property interests on death and \textit{inter vivos}, analogous to that which is discussed in relation to trusts.\(^{27}\)

Trusts and Foreign Property Law Rights—A Proposal

31. Notwithstanding these concerns, we recognise that a will may leave property on trust, or subject to a foreign property right, and that the \textit{lex successions} ought not to be applied in such a way as wholly to ignore the nature of the rights created. If the testator leaves property to X to hold on trust for Y, the Regulation would be of limited effect if it did not at least recognise the validity of the transfer to X as trustee under the will. But all the legal consequences of trusteeship, the fact that the trust property creates a separate fund from X’s own patrimonial estate, and the administration and operation of that trust should be matters falling outside the scope of the Regulation.

32. On the basis that the scope of the Regulation is clearly limited in this way, and that it should remain a matter for the private international law rules of the forum to determine the effects to be given to such property rights as trusts, usufructs etc., then the scope of the instrument would be much more workable in practice. Such an outcome would, unlike a wider approach, respect the principle of subsidiarity and should ameliorate

\(^{25}\) Official Report on Trusts Convention, paragraph 54.
\(^{26}\) See paragraph 19 above.
\(^{27}\) Paragraph 27.
difficulties with the application of a law other than the *lex situs* to immovable property. In defining the scope of the Regulation inspiration could be drawn from Article 14 of the Hague Succession Convention, which states that:

“(1) Where a trust is created in a disposition of property upon death, the application to the succession of the law determined by the Convention does not preclude the application of another law to the trust. Conversely, the application to a trust of its governing law does not preclude the application of the law governing succession by virtue of the Convention.

(2) The same rules apply by analogy to foundations and corresponding institutions created by dispositions of property upon death.”

33. A rule of this kind would mean that, where a testamentary trust is concerned, a court should apply the *lex successionis* to determine if the will in which the trust is contained is valid. This will answer the question of whether the trust has been lawfully created in the first place. It would then be for the law applicable to the trust to decide upon the validity of the trust and the legal consequences of trusteeship. All these latter matters would fall outside the scope of the Regulation.

34. We are aware that there are significant differences between the laws of Member States regarding the extent to which the estate of the deceased passing under the law of succession includes or takes into account lifetime dispositions of property. In some, we understand that gifts made many years before death are brought into account by “clawback” provisions. These clawback provisions raise fundamental concerns for the UK. Throughout the UK, property forming the deceased’s estate does not include assets validly disposed of by gift to individuals, companies or trustees during the deceased’s lifetime, so that the *lex successionis* does not apply to such property. This respects a party’s freedom to alienate property during his or her lifetime and, in a commercial context, to invest funds in valid *inter vivos* trusts.

35. Any proposal that would undermine the integrity of such trusts, directly or indirectly, by actions against the deceased’s estate to the value of the funds invested in an *inter vivos* trust would be likely to drive investors to offshore trust jurisdictions operating under laws designed to protect against clawback. This prospect is of great concern to the UK. In our view, where a valid *inter vivos* trust has been created, for the reasons given above, the trust property must fall wholly outside the scope of any legislation and must not be impugned by the *lex successionis*, or give rise to compensatory claims by heirs.

36. The same principle applies to lifetime gifts by the deceased. These dispositions must not be undermined by the Regulation.

Clawback of Assets—A Possible Solution

37. One solution would be to provide an autonomous definition of the “estate of the deceased”, explicitly to state that “it does not include assets validly disposed *inter vivos* according to the applicable governing law at the date of the disposition” and to explain that “nor should compensation claims in relation to such assets be permitted”. Hence, the estate might be defined as “a person’s whole assets which they own at death, including all immovable and moveable property but excluding any *inter vivos* gifts, transfers on trust or other dispositions.”

38. The definition of the deceased’s estate should not, however, be left to the *lex successionis*. This could have an element of circularity if the very issue in question is whether an asset disposed of *inter vivos* forms part of the deceased’s estate. It would also make the application of the Regulation significantly less predictable, and thus undermine a key rationale for its very existence. It is equally apparent that the definition cannot be left to the *lex fori*.

39. Whatever solution is adopted, it is our view that the Regulation should not undermine the validity and integrity of *inter vivos* dispositions of property, whether for value or not.

28 See paragraph 24 above.
Reserved or Compulsory Heirship

40. We would stress that our concerns relate specifically to clawback of assets validly disposed of *inter vivos* only. Beyond that, the UK would be willing to accept the application of a *lex successionis* that provides for compulsory rights of heirship of particular relatives of the deceased. Although the principle is not recognised in English or Northern Irish law, it does exist in Scots law. In Scotland, the surviving spouse and children of a deceased person have legal rights which cannot be defeated by any testamentary disposition and apply whether the testator dies testate or intestate.

41. In this respect, we would distinguish the entitlements under reserved heirship provisions, such as those that apply in Scotland, from the very rarely encountered discretionary awards in favour of dependants that can be made by the court in England and Wales and Northern Ireland.29 These awards can overturn dispositions of property made at an undervalue up to six years before the death with intent to defeat the operation of the relevant legislation.30

42. An autonomous definition of succession that conferred compulsory heirship rights would be very problematic. This would be well beyond the proper scope of the Regulation and would represent a uniform and unwarranted application of a particular ideology of succession law. Forced heirship should simply be a matter for the *lex successionis*. The only necessary derogation from application of the compulsory heirship rules of the *lex successionis* would be a general public policy exception in the Regulation. It is envisaged that this would only be invoked very infrequently.

Part D—Conclusion

43. In conclusion, the UK considers that the Regulation on succession should deal with succession matters only. In particular, it should not apply to the process by which property is transferred to the beneficiaries of the estate. In our opinion, the Regulation should not create a situation in which different rules apply to property interests depending on whether they are created *inter vivos* or on death. Nor should it require Member States to give recognition to foreign property interests in ways that could not otherwise be accommodated within their legal systems. If the scope of the Regulation can be properly defined in this way then we consider that it offers the prospect of bringing real benefits to the citizens of all Member States.

Letter from the Chairman to Bridget Prentice MP

Thank you for your letter of 6 February. Sub Committee E has noted with interest the contents of the two papers you have sent to the Commission.

Unless there are particular reasons why it would not be appropriate to disclose those papers, we think it would be helpful to send copies to the Law Society which has taken a close interest in this matter.

There is, of course, no document currently under scrutiny but we look forward to considering this matter further when the Commission publishes its expected proposal for legislation.

7 March 2008

Letter from Bridget Prentice MP to the Chairman

Thank you for your letter of 7 March.

I have no objection to you sending copies of the papers enclosed with my letter of 6 February to the Law Society. I would also not object to copies being sent to the Society of Trust and Estate Practitioners, which you also mentioned in your letter of 25 October.

In that letter you asked to be kept informed of developments on this dossier and for an update in any event by the end of March 2008. Given our intervening correspondence, there are no significant new developments to report. I would, however, mention for completeness that two of my officials, an official from the Scottish Executive and Professor Harris visited officials at the Commission in late December to discuss the UK paper on the proposed scope of the possible regulation. The meeting was a useful opportunity to explain the UK’s concerns. There has been no substantive response to either paper. I understand that the Commission hopes to hold some form of public hearing this summer and to publish a legislative proposal in late 2008 or 2009. I will keep the Committee informed of developments.

11 April 2008

29 Inheritance (Provision for Family and Dependants) Act 1975; or, in Northern Ireland, the Inheritance (Provision For Family And Dependants) (Northern Ireland) Order 1979. There are also anti-avoidance provisions in tax and bankruptcy legislation

SUSPENDED SENTENCES AND ALTERNATIVE SANCTIONS (5325/07, 14759/07)

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

Thank you for your letter of 25 October. The Committee asked for further information following its continuing consideration of this draft Framework Decision and I will deal with each of your points in turn.

SCOPE AND ALTERNATIVE SANCTIONS

The issue of scope and how to deal with alternative sanctions continues to be discussed in the Working Group. The main message from the seminar in Lisbon was that for judicial co-operation to be effective there needs to be simplicity in processes. Bearing this in mind, and the general principle that full responsibility for the sentence should transfer to the executing State, there has been much debate as to whether alternative sanctions should be within scope and, if so, how they should be dealt with.

The instrument provides for an agreed list of requirements that may be supervised in every Member State. The current draft of the instrument (not printed) proposes that alternative sanctions and conditional sentences will be within scope and that the executing State in all cases will be responsible for supervision and for minor decisions requiring the sentence to be modified. But Member States may make a declaration at the time of adopting the instrument that they will refuse to accept responsibility for imposing a custodial sentence for breach of an alternative sanction or conditional sentence where the custodial penalty does not form part of the judgment. In such cases, jurisdiction would transfer back to the issuing State.

This is not an ideal solution but as far as the United Kingdom is concerned, as an executing State, we could accept full responsibility for all sentences under this Framework Decision apart from conditional sentences, which will be rare as few Member States have this sentence as defined under the instrument. However, as an issuing State we would not transfer alternative sanctions to Member States which would not take on full responsibility for both supervision and enforcement as we do not consider that it would be worth the effort.

There is considerable administrative effort involved in transferring sentences and we do not believe that the issuing State will be able to deal with a breach where the offender is residing in the executing State so we do not consider that the instrument adds value in these circumstances.

FUNDAMENTAL RIGHTS

Under the current draft of the Framework Decision, jurisdiction for the sentence either falls wholly to the issuing State or the executing State and the relevant domestic law will apply. This would mean that the same rights and safeguards will apply as for those offenders who are sentenced domestically. The offender would also have the right to judicial review in relation to any matters arising from decisions made on transfer and adaptation of the sentence. We are generally satisfied with this position but the issue will be subject to further discussion in the Working Group and there is a new recital on rights in the latest version of the instrument.

GROUNDS FOR REFUSAL TO RECOGNISE JUDGMENT

I note your concerns about the application of the instrument to young children and I can assure you that we will have full regard to the welfare of the child when implementing the Framework Decision. It should also be remembered that the decision to forward a judgment for consideration of transfer is wholly discretionary on the part of the issuing State and such consideration will have been prompted by the offender’s wish to return to the State of his lawful and ordinary residence.

DIVISION OF RESPONSIBILITIES

You ask about how conditional sentences would be dealt with under the Framework Decision, which I have addressed above. Essentially, under the current draft, where the executing State does not consider that it can take on full responsibility for enforcement then jurisdiction would transfer back to the issuing State for the imposition of a custodial sentence.

REVOCATION OF SUSPENSION

You asked for an update on the discussions on Article 15. The current draft of the instrument provides for the possibility of jurisdiction returning to the issuing State where non-compliance with an alternative sanction or conditional sentence requires the imposition of a custodial sentence and the executing State has refused to assume responsibility for such decisions. Article 15 deals with the obligations of the executing and issuing
States in relation to the exchange of information in these circumstances and Article 15a, which dealt with provisional arrest, has been deleted. It would be for the issuing State to consider, where appropriate, the issue of a EAW or use of the Framework Decision on the transfer of prisoners.

It is the intention of the Presidency to seek agreement to a general approach at the December JHA Council. We consider it an open question whether the Presidency can, in fact, achieve this but we will put the latest version of the instrument before Parliament so that you can consider it at the earliest opportunity.

22 November 2008

Letter from the Chairman to Bridget Prentice MP

This proposal was considered by Sub-Committee E at its meeting of 5 December 2007, together with your letter of 22 November 2007.

SCOPE AND GROUNDS FOR REFUSAL TO RECOGNISE JUDGMENT

As previously advised, we are in favour of a comprehensive Framework Decision which would promote equal treatment of all sentenced persons. We note that the Government prefer a minimum threshold and that the most recent draft of the Framework Decision would permit an additional discretionary ground for refusal to execute a request for transfer on the basis that supervision would be for less than six months. We do not support the inclusion of such a limitation, although we understand that it is likely to gain agreement in the Council. We therefore urge the Government in their implementation of the Framework Decision to allow executing authorities maximum discretion in deciding, in light of the circumstances of each case, whether to permit the transfer or whether to take advantage of this additional ground for refusal. We see no justification for the block exclusion of such requests.

ADAPTATION OF SANCTIONS

Given that alternative sanctions and probation measures capable of being transferred are set out in Article 5, we would expect that recourse to the Article 7a power to adapt sanctions where their “nature or duration” is incompatible with the law of the executing State would be limited to matters of the duration of sanctions and purely technical issues. The Article 7a power should not be used to substantially change the nature of the supervision measure being opposed. Is this also the Government’s understanding of this provision?

FUNDAMENTAL RIGHTS

We continue to press for the inclusion of a specific provision on the right to a hearing to determine whether or not probation measures or alternative sanctions have been breached, which would take place prior to the revocation of the suspension or the imposition of a custodial sentence. You suggest in your EM (paragraph 56) that Article 15(4) provides that “no sentence or measure shall be translated into a custodial one without a judicial hearing”. This is not our reading of Article 15(4), which in our view simply provides that in cases where the issuing State retains responsibility for subsequent decisions, if its national law provides that there should be a hearing then this requirement can be met by a videoconference. You advise in your letter that the latest draft provides for a sentenced person to have the right to request that any decision to revoke a suspension and execute a sentence or to impose a custodial sentence be reviewed by a court. We support such a provision and would be grateful for your confirmation that it has been included in the draft put forward for agreement of a general approach at the JHA Council.

TIME LIMIT

We note that the time limit for a decision on whether to recognise a judgment has been increased from ten to sixty days. This seems an excessive period. In the context of the European Arrest Warrant, the time limit is 10 days where the individual consents to his transfer. What reasons have Member States given for such a lengthy time limit?

RETENTION OF RESPONSIBILITIES

The current draft seems to have attempted to bring some clarity to the circumstances in which responsibility for future decision may be retained by the issuing State. We understand that, unlike the previous draft, the Framework Decision now provides that the executing State (and not the issuing State) may refuse the transfer of responsibility for future decisions. Refusal is permitted in three circumstances:
— Article 8(4): where there is an absence of dual criminality, for the revocation of the sentence and execution of the judgment; or for the imposition of a custodial sentence in cases of alternative sanctions or conditional sentences;

— Article 12(3): for the revocation of the suspension of execution of the judgment; and

— Article 12(3): for the imposition of a custodial sentence in cases of alternative sanctions or conditional sentences.

We would be grateful if you could confirm that this is also your understanding of the position and explain why Article 8(4) is considered necessary given the general power in Article 12(3).

We are surprised to see that the executing State may refuse the transfer of responsibility for the revocation of the suspension of the execution of the sentence. While we understand the problems for an executing State in setting a sentence in respect of a crime committed abroad, similar issues do not in our view arise where the sentence has already been set by the foreign judge and the executing State is merely responsible for enforcing it in the case of a breach. What has prompted the inclusion of this type of decision in the list of matters in respect of which the issuing State can be required to retain responsibility?

**DUAL CRIMINALITY**

You advise in your letter of 3 December that the latest draft includes a new provision to the effect that a Member State can agree with the issuing State to supervise the measure without assuming any responsibility for future decisions (including a decision to modify the measure or its duration) in the absence of dual criminality. What has prompted this change? Is this purely a technical matter related to the difficulty in practice of Member States having to impose sanctions in respect of acts which do not constitute a crime under national law, ie how the sentencing law of the executing State could be applied to acts which are not crimes in the executing State? Or is there a more important objection here?

You also advise that the latest draft re-introduces the right of Member States to refuse to recognise and execute a judgment at all in the absence of dual criminality (including for the previously agreed and now standard list of 32 offences). This appears to be a step backwards in mutual recognition and we would be interested to hear why this right has been introduced and to have your views on any precedent that this might set for future cooperation in criminal law.

We recognise that a general approach is likely to be sought at the December JHA Council. In light of the outstanding concerns set out above, we do not feel able to release the proposal from scrutiny, although we are content to clear document 5325/07 as superseded. However, in view of the urgency of this matter, we would not want to stand in the way of the Government participating in a general approach on the basis of document 14759/07 COPEN 152 and the developments outlined in your letter of 3 December and would not consider that to be a breach of the Scrutiny Reserve Resolution.

**6 December 2007**

**Letter from Bridget Prentice MP to the Chairman**

Thank you for your letter of 6 December. The Committee asked for further information following its continuing consideration of this draft Framework Decision and I will deal with each of your points in turn. As you are aware, a general approach on the text of the instrument was reached at the JHA Council on 7 December (not printed), subject to further work on the recitals and certificate.

**SCOPE AND GROUNDS FOR REFUSAL TO RECOGNISE A JUDGMENT**

You are not in favour of a ground for refusal on the basis of proportionality as you consider that the instrument should promote equal treatment of all offenders. As you are aware, we take a different view. There would be a lot of effort at considerable expense in transferring what are relatively minor sentences. We consider that there is no point in considering transfer of all such cases as many sentences will be so short that they will have expired, or virtually expired, by the time that transfer has been agreed. The 60-day time limit for deciding on a transfer does not take account of the time taken to prepare the relevant documentation, including translation, before the judgment and certificate is sent to the proposed executing State. In addition, there is further time allowed for the issuing State to consider whether it wishes to withdraw the certificate on the basis of any adaptations to the sentence. The instrument now provides for a discretionary ground for refusal where the sanctions are of less than six months’ duration, not a blanket exclusion of all such cases.
Adaptation of Sanctions

We agree with your understanding of Article 7a, which provides for the adaptation of sanctions so as to make them compatible with the domestic law of the executing State. The adaptations should be confined largely to the overall duration of the sanction, the duration of the individual obligations imposed on the offender, and the period of suspension, etc, and possibly other technical matters. But the content of the sentence should not be subject to change given that Article 5 provides for an agreed list of obligations that can be supervised in all member States; nor could the executing State decide, for example, to change an unpaid work requirement to a supervision requirement.

Fundamental Rights

I can confirm that in the instrument that received general approach at the JHA Council (Article 4(2)(a)) there is provision for an offender to have the right to request that any decision to revoke suspension and execute a sentence or to impose a custodial sentence be reviewed by a court or another independent court-like body if such a decision was not taken by a court in the first instance. The instrument also makes clear that the national law of the relevant Member State applies so that offenders will have the same rights as if they had been sentenced in that State. Mutual recognition instruments are based on trust and Member States have to respect the fact that different systems will operate across the EU. All member States are required to comply with the ECHR and no offender should be disadvantaged in terms of fundamental rights under this instrument.

Time Limit

The time limit of 60 days for deciding on whether or not to recognise a judgment was a compromise as some delegations, including the UK, suggested a shorter period but others were pressing for an even longer period. There was a concern that, in particular, there should be sufficient time for a judicial authority to consider the matter, in Member States where such a system will operate. There also needs to be time to check the residence status of the offender and other matters such as the availability of treatment, etc. Article 10 makes clear that 60 days is the maximum period in which to make a decision and Member States may decide to set their own, shorter, time limit for making decisions. While this is not an ideal outcome, the situation is slightly different to that of the European Arrest Warrant because under this instrument judicial proceedings have been completed and the convicted person is not in custody and in many cases will be at liberty to travel.

Retention of Responsibilities

You asked for clarification on the interplay between Article 8 and 12. Article 8(4) provides a Member State to make a declaration that it will not apply paragraph 1, i.e. recognise and supervise a judgment without verification of dual criminality of the offences listed. Article 9(1d) provides for a discretionary ground for refusal on the basis of dual criminality but 9(3) also provides that the executing State may, nevertheless, decide to supervise the sanctions (but not take any subsequent decisions). Article 12(3) provides for Member States to make a declaration that they will not assume responsibility for taking the more serious subsequent decisions outlined in 12 (1b) and (1c) in certain cases, primarily conditional sentences and those alternative sanctions which do not contain a provisional penalty for breach of the sentence. The different provisions, therefore, do cover different circumstances.

There is an assumption that responsibility for suspended custodial sentences would transfer wholly to the executing State but not every Member State has such sentences. Such member States may have difficulty in taking enforcement decisions where there is no system for determining breaches of such sentences, including mechanisms for taking into account whether a lesser period of custody should be imposed to take account of the extent to which an offender has complied with any community requirement of the sentence.

Dual Criminality

You also asked for clarification of the dual criminality provisions. There is provision for an executing State to supervise the sanctions without assuming any responsibility for future decisions. This is intended to limit the number of cases that are refused and, as you say, relates to the difficulties some Member States may have in taking any enforcement action in respect of acts which do not constitute a crime under their national law.

At the Council meeting, I expressed our regret that the principle of mutual recognition had been somewhat diluted, in particular by the extension of the dual criminality rule. The Commission also expressed the view that it should not set a precedent for future mutual recognition instruments.
Letter from the Chairman to Bridget Prentice MP

Thank you for your letter of 16 January 2008 which was considered by Sub-Committee E. We are grateful to you for your full explanation of the agreement reached at the December JHA Council. The Committee has decided to clear the proposal from scrutiny.

31 January 2008

THIRD COMPANY LAW DIRECTIVE AND SIXTH COMPANY LAW DIRECTIVE: REQUIREMENT FOR INDEPENDENT EXPERT ADVICE (7207/07)

Letter from the Chairman to the Rt Hon Stephen Timms MP, Minister of State for Competitiveness, Department for Business, Enterprise and Regulatory Reform

Thank you for your letter of 30 August\(^2\) which was considered by Sub-Committee E at its meeting on 21 November. We are grateful for your keeping the Committee informed of developments and are pleased to see that agreement has been reached on the proposed amendment of the Third and Sixth Company Law Directives subject to the minor changes set out in your letter.

22 November 2007

Home Affairs
(Sub-Committee F)

BIOMETRICS IN PASSPORTS (14217/07)

Letter from the Chairman to Meg Hillier MP, Parliamentary under Secretary of State, Home Office

Sub-Committee F of the House of Lords Select Committee on the European Union examined this proposal at a meeting on 28 November 2007.

The Committee agrees that there should be an exemption from the obligation to provide fingerprints for passports and other travel documents on account of age and disability. We are concerned, however, that setting the age limit for exemption at six will lead to a generalised finger printing of children in the absence of persuasive evidence that fingerprinting of children at such a young age can provide reliable identification.

You recognise in your explanatory memorandum that there are risks associated with fingerprints taken from those under the age of 11 (the limit the Government have in mind for domestic purposes) and that they need to be balanced against the costs. What we are not told is how such a measure might be justified within the human rights framework, in particular with regard to the interference with Article 8 ECHR (right to privacy) in relation to personal information in circumstances involving children. We would have expected this explanation to be given as part of the fundamental rights analysis. You suggest that this has not been done because “there will be no impact on UK law or policy”.

We do not accept this. The Government has given Parliament an undertaking to provide an analysis of the compliance with fundamental rights of every draft legislative proposal submitted for scrutiny, not just those in which the UK participates. Moreover, the measure does clearly have domestic implications. As you explain, not only will the UK keep in step with the Regulation, but it will consider whether there is a case for taking fingerprints from those under the age of 11.

The Committee would like to receive a detailed analysis of the fundamental rights implications, in the form of a supplementary EM, explaining in particular how in your view the interference with Article 8 ECHR is justified in circumstances involving children. In the meantime, the Committee has decided to keep the document under scrutiny.

29 November 2007

Letter from Meg Hillier MP to the Chairman

Thank you for your letter of 29 November 2007 on the above proposal. In particular you stated that concerns had been raised by the Committee over the implications of the proposal that fingerprints be taken from all those aged six and above. You were concerned over the absence of a fundamental rights analysis in the Explanatory Memorandum submitted to the European Scrutiny Committee in November 2007 and asked that one be provided including an explanation of the impact of the proposal on Article 8 ECHR.

Since you wrote to me, the European Court of Justice has dismissed the UK’s challenge against its exclusion from Council Regulation (EC) No 2252/2004. Consequently the UK does not participate in this Regulation and is not covered by its provisions. As such, a Fundamental Rights Analysis of the proposal would not normally be prepared since it would be a purely theoretical exercise: the UK does not participate in the negotiations and cannot influence the final provisions. Whilst it may be of interest, I do not feel, at this stage, that producing an analysis that has no practical application to the UK is an efficient use of Home Office resources.

Confirmation of our exclusion from the Regulation removes any requirement for the UK to introduce fingerprints in passports. However, we have said that we would keep in step with the Passport Regulation to ensure that the British passport is not seen as “second class”. In the Strategic Action Plan for the National Identity Scheme published in December 2006 we anticipated that it may be necessary to record finger prints for passport purposes from those aged above 11 years old. However, the UK. has not decided on a timetable for the introduction of passports with fingerprints nor has it been finally decided the age at which fingerprints will be required to be included. Once the outcome of the Commission proposal on ages is known, we will
consider further whether there is a need to review our plans. Such a review will also include an analysis of the factors that have been raised in your letter (interference with Article 8 ECHR) if we decide in future to introduce a fingerprinting requirement for children in line with the EU regulation. I would be happy to provide the Committee with a copy of that analysis once completed.

23 January 2008

Letter from the Chairman to Meg Hillier MP

Thank you for your letter of 23 January 2008. Sub-Committee F of the House of Lords Select Committee on the European Union considered it at a meeting on 20 February 2008.

We reject your argument that providing a fundamental rights analysis of a proposal which the UK does not participate in, or has not yet decided whether to opt into (as is the case with document 14490/07), is a “purely theoretical exercise” and not an “efficient use of Home Office resources”. This is not an argument which has ever been put forward in relation to any other aspect of an EM solely because the United Kingdom is not, or may not be, opting in to the instrument, and we do not see on what ground the fundamental rights analysis can be differentiated.

Cabinet Office Guidance on the fundamental rights analysis in EMs is clear in this respect: the amended guidance and the covering letter with which it was circulated on 30 July 2007, both refer in terms to “every draft legislative proposal submitted for scrutiny” (my emphasis). There is no suggestion that a different rule should apply if the United Kingdom is not, or may not be, opting in.

This of course is an issue affecting not just this instrument but every instrument where the United Kingdom is in the same position. In our view, in the case of every such instrument the EM should contain a fundamental rights analysis. We look forward to receiving a supplementary EM in relation to the proposal so that the Committee can begin its scrutiny of it.

20 February 2008

Letter from Meg Hillier MP to the Chairman

Thank you for your letter of 20 February 2008 in reply to my letter of 23 January on the above proposal.

Your letter raises a number of cross departmental issues around the circumstances in which a Fundamental Rights Analysis is provided. This requires consultation across Government, which will take place in early March. I will provide you with a substantive reply as soon as the outcome is known.

6 March 2008

BIO-PREPAREDNESS (11951/07)

Letter from the Chairman to Rt Hon Ed Miliband MP, Minister for the Cabinet Office

Sub-Committee F of the Select Committee on the European Union considered this Green Paper at a meeting on 14 November 2007, and decided to clear it from scrutiny.

The deadline for replying to the Consultation Paper has now passed. There are however two issues we should like to draw to your attention so that the Government can consider putting them to the Commission as supplementary points.

The first is the protection to be accorded to those in the front rank of any response to a biological hazard. There is no mention in the paper of the desirability of having a cadre of persons immunized and vaccinated in advance against precisely the risk with which they are having to deal: an example would be having those doctors who would initially respond to a smallpox outbreak vaccinated against smallpox. It may be that, under the doctrine of subsidiarity, the Commission regards this as something which is wholly within the responsibility of the Member States, but we would like the Government to consider whether there is not some scope for action at EU level.

The second issue is the importance of having in place mechanisms which, after a biological attack, can rapidly identify the pathogen responsible. Paragraph 5.4 of the Green Paper hints at this, referring to improving detection capabilities by improving the speed of laboratory testing, but it is not clear that this is precisely what the paper has in mind. We believe that this too is a field where action and research at EU level could be beneficial.

16 November 2007
Letter From Gillian Merron MP, Cabinet Office Minister and Minister for the East Midlands to the Chairman

Thank you for bringing to my attention the issues raised by the Sub-Committee on Home Affairs when considering and clearing the Green Paper.

I am grateful for your advice on the issue of vaccination or immunisation of primary responders. Although the Green Paper refers in general terms to the need to ensure flexible and effective public health and civil protection responses, and notes existing measures (Directive (EC) 2000/54) on worker risk reduction which oblige employers to plan for accidents involving biological agents, it does not specifically address the point which you have noted. The European Union’s Health Security Committee provides a forum in which Member States can consider this issue; and although the Community does not have competence in public health, the Government will consider how best to draw it to the attention of our European colleagues.

I welcome also your observation on the importance of rapid pathogen identification. The Government’s response to Question 30 of the Green Paper notes the importance of first mapping existing capacity, which should be feasible under current funding mechanisms. In this context, there is also potential value for the EU in the Government’s Foresight initiative work on Detection and Identification of Infectious Diseases. Although Question 30 is not entirely clear, it is unlikely that a single EU capacity could service the varying needs of all Member States. Such a facility could be useful to those countries which are at risk and do not have their own live-agent testing facilities; and in this context EU funding to research common detection needs might be more beneficial. The Government therefore agrees that the EU should look at this issue and will consider how best to raise it with European colleagues.

29 November 2007

ANNEX A

UK GOVERNMENT RESPONSE TO EC GREEN PAPER ON BIO-PREPAREDNESS

Introductory Statement

The UK welcomes the Green Paper’s comprehensive all-hazards approach to bio-preparedness and its recognition of relevant work in wider international fora. This provides a potentially useful basis for devising and taking forward innovative measures to address biological hazards in the EU.

General Observations

The thrust of the Paper is to develop a common set of European measures to enable more rapid response to threats from deliberate, accidental or natural exposure to hazardous biological agents. The proposals make a clear effort not to duplicate current legislation. By working together, Member States may add value through coordinating their approaches to bio-preparedness. This could be by setting common standards, identifying vulnerabilities, using common terminology, and by sharing common definitions. In this response, “hazard” or “threat” refers to a potential source of harm; and “risk” means the product of the likelihood (probability) and the impact (consequences) of a hazard or threat occurring.

The Paper appropriately adopts an “all-hazards” approach to biological threats. This includes bio-terrorism or deliberate release and food chain contamination. Many of the measures discussed appear to be generically applicable to any kind of deliberate release, and are not necessarily limited to food or water contamination scenarios. Food chain issues themselves vary across different countries; e.g. in some European countries there may be proportionally more small-scale producers than in others; and while large producers have potential for wider dispersal of contaminated products, smaller producers should also not be ignored.

The consultation aims to stimulate discussion. We agree that, although the likelihood of bio-terrorist attack or deliberate release may vary, its impact could be high. The public’s perceived risk and fear are also significant. Scientific research on dangerous pathogens and their mechanisms of transmission must continue, as this is a major part of bio-preparedness. Exchange of research results is necessary for scientific progress. Awareness-raising campaigns and existing regulatory frameworks are preferred to new legislation.

Measures should be proportionate to risks, and require an international approach. Robust regulatory frameworks cover this area in the UK. The research community support the self-governance of science within these frameworks. The private sector has an important role to play within these discussions. In this context it is important to distinguish between the risks associated with short-term academic biological science, which may receive variable supervisory support, and longer term more rigorously supervised scientific research programmes. Also, physical bio-safety measures are distinct from the security vetting of personnel.
There is concern that some proposals will increase the costs of undertaking such research to businesses, Public Sector Research Establishments (PSRE) and Universities. Any such added costs would need to be proportionate to the risks. However, the proposals could also create opportunities for UK business and the science base.

The UK’s health system is considered part of our critical national infrastructure. More widely, countries lacking a high level containment laboratory [bio-safety level 4] can now obtain access to one of the existing laboratories; but laboratory access does not itself determine access to sufficient vaccine for the resident population.

A European level debate on how to reduce biological risks and to enhance preparedness and response is helpful. We agree that a comprehensive and coherent “all-hazards” approach is right, and that the focus should be on identifying existing gaps. The formulation of measures to strengthen the European level of bio-preparedness should be based on a detailed risk assessment to ensure that any emerging proposals are proportionate to the probability and impact of the hazards; should focus on guidance for assessment methods and on pan-European risks; and should not unnecessarily duplicate work already being undertaken at national level. The Green Paper could also refer to EU preparedness for pandemic influenza, which is probably one of the greatest current biological threats.

We welcome specifically the Green Paper’s recognition that a holistic biological risk reduction approach would include the 1972 Biological and Toxin Weapons Convention (BTWC), the Australia Group, and public health assistance tools. All EU Member States are States Party to the BTWC, and members of the Australia Group. The Paper’s proposed measures should not duplicate but should add value to work in hand in these and other fora, including the UN. The 6th BTWC Review Conference (December 2006) agreed a work programme for 2007-10 to discuss and promote common understanding and effective action on topics including:

- National, regional and international measures to improve bio-safety and bio-security, including laboratory safety and security of pathogens and toxins. (2008)

- Oversight, education, awareness-raising, and adoption and/or development of codes of conduct with the aim of preventing misuse in the context of advances in bio-science and bio-technology research with the potential of use for purposes prohibited by the Convention. (2008)

- With a view to enhancing international cooperation, assistance and exchange in biological sciences and technology for peaceful purposes, promoting capacity building in the fields of disease surveillance, detection, diagnosis, and containment of infectious diseases. (2009)

- Provision of assistance and coordination with relevant organisations upon request by any State Party in the case of alleged use of biological or toxin weapons, including improving national capabilities for disease surveillance, detection and diagnosis and public health systems. (2010)

The Green Paper addresses these topics, although not necessarily to the same timetable. EU activity in these areas could inform BTWC work and vice versa. Given the nature of biological incidents, both global and regional cooperation are critical. If security and surveillance are to add value, the exchange of best practice should include states such as the USA.

**Key principles of bio-preparedness**

We agree with the non-legislative thrust of the paper, and the statement that measures should be proportionate; but who would be responsible for deciding what is proportionate to the probability and impact of a hazard? On page 8 there is a suggestion that one possible role of a European Bio-Network [EBN] could be to recommend possible guidelines and codes of conduct for researchers. We would prefer to see the development or adoption of any ‘code of conduct’ or guidelines to be a ‘bottom-up’ process. Although infrastructural laboratory networks have been developed within individual states such as the UK, laboratory capability to detect and identify the biological agents most likely to be used in deliberate release is uncoordinated across EU MS; and a European Bio-Network could gather MS information, facilitating knowledge transfer and gap analysis to support prioritisation efforts. However, we would have questions about how any EBN would be organised, managed and funded, and about its relationship to existing capabilities.

More work is required on possible scenarios and the responses to them. This could be done through additional workshops and exercises.
Q1. Is a comprehensive approach to European biological risk reduction and preparedness required?

A globally coordinated approach is desirable. Pandemic influenza planning is improving the potential response to a mass casualty “rising tide” event. There may be benefits to a cross-EU approach but these would only become apparent if there were an EU-wide risk assessment which identified the probable threats and vulnerabilities and how the resulting risks might be mitigated. If we start by assuming that the comprehensive approach is required then we are bound to face varying levels of preparedness which can only properly be addressed by individual Member States. A fully comprehensive and “uniform” approach is unlikely to be possible. What may be more acceptable (and desirable) is an approach encompassing commonly agreed principles. These might, for example, include:

- Encouraging the adoption of professional standards for those working in academia, Public Sector Research Establishments and industry.
- Stakeholder engagement in sharing best practice and developing exercises.
- Notification procedures in the event of thefts/losses of dangerous substances.
- Ensuring suitable laboratory security.

Q2. How could the EU bridge the perceived gap between non-proliferation and international cooperation in a dual-use field such as biology?

There is no inconsistency between adhering to non-proliferation measures and furthering international cooperation in dual-use fields such as biology. The EU should use its contacts with third countries to emphasise that non-proliferation is in the interests of all states and to identify common challenges. We support use of the EU’s external action instrument to help spread best practice, and build capacity, and see such assistance as one means through which the EU could help bridge any perceived gap between non-proliferation and international cooperation. International (or overseas) development aid could be a further tool to promote international cooperation, consistent with non-proliferation principles, in a dual-use field such as biology.

Q3. Can the current defence mechanisms for facing natural and non-intentional crisis situations become more efficient to cope with deliberately provoked mass-scale and simultaneous crisis situations?

Managing the consequences of either an accidental or a deliberate biological incident is likely to require similar i.e. largely health-related responses. International co-operation in a widespread event is therefore likely to be both desirable and achievable. The private sector has a significant role in biological laboratories in many countries, would need to be part of the response, and is a significant contributor to research. Interchange at national level of contingency procedures and processes already in place could elucidate best practice and be adopted locally where not in place.

Q4. How could the European Centre for Disease Prevention and Control, as well as the European Food Safety Agency contribute to this endeavour?

Peer evaluations might well be useful but can be expensive and the issues under review (which are wide-ranging) would need to be precisely defined. There also needs, presumably, to be some sort of benchmark against which to review; but its agreement and implementation may take a long time. We have reservations about this. What would be the added value? Each agency could facilitate international exchanges of relevant information in relation respectively to specific zoonotic and food-borne pathogens; and their roles in risk assessment and management would then need to be clearly defined. The ECDC should take the lead in this field; and to this end its capacity should be strengthened.

Q5. Would peer evaluation methods be useful in addressing existing shortcomings across Europe?

Regulation and implementation should be devolved to Member States; however the EU could have a role in reviewing overarching regulatory frameworks and promoting best practice, provided this avoids unnecessary extra bureaucracy. Peer evaluation by scientific experts may help to minimise risk of dual-use research, and could be potentially useful if relating to detection and safe handling of a specific list of identified pathogens. However, this is difficult because the threat lists are classified in most countries. An all-hazards approach avoids this, but then issues of specific tests and antidotes cannot be discussed.

Q6. What role should be played by the private sector in a public-private partnership?

The private sector has an important role to play in these discussions. Networking between private and public sector already exists, including with the pharmaceutical industry. This is for each MS but there could be EU guidance on good practice. Can each country identify where this activity is happening? Are all research facilities licensed? This needs more work. All private industry sub-sectors should be involved in national and international bio-preparedness.
Q7. Should an EBN (European Bio-Network) be created in order to support the implementation of the results of this consultation?

The need for an EBN should be explored in the light of existing advisory structures and its potential roles and responsibilities. Such a network would necessarily be dynamic and adaptable depending on the agents being considered. Its design should take account of the ECDC, the OiE and other such inter-governmental and regulatory organisations.

Q8. How could cooperation among relevant authorities and agencies at EU level be improved?

There are already excellent links between subject matter experts in the areas of health (especially disease control) and law enforcement; but these sectors could probably do more to overcome barriers to engagement, for example in forensic epidemiology. It would be important for any EU-sponsored research initiatives to be linked to a common risk assessment, for both malicious and natural diseases, and for this to be visible across all MS. It is sensible to improve cooperation. The questions are whether such cooperation could or would be implemented in each country, and what action should be taken if it is not.

**Prevention and Protection**

**Awareness**

We agree that awareness-raising activities can be beneficial with stakeholders. Work carried out by the Organisation for the Prohibition of Chemical Weapons could inform debate here. Guidance could be developed on obligations by an expert group and disseminated through conferences, workshops or seminars. A panel of expert advisers could be called upon to assist in compliance. However, it would be essential to ensure an appropriate and well-defined level of expertise, and to clarify both the role and the status of their advice.

Q9. Should awareness among stakeholders be increased about possible risks related to biological research and commercial activities and about the rules they have to comply with? If so, how?

See answer to Q.10 below. The answer to this is almost certainly “yes”. However, it is difficult to assess the current state of knowledge or what more might be provided; and there are necessarily national security constraints. We would need detailed proposals before commenting. It could be interesting but also strangle international cooperation at birth.

Q10. Do you experience difficulties in following new adjustments of rules and restrictions? If so, which ones?

We support measures to raise awareness. Bio-safety Officers (BSOs) of Research Council Institutes and Units and Public Sector Research Establishments have the responsibility within institutions for raising awareness about new legislation, and advising senior management about implementation. The EU could have a role in ensuring minimum standards of training and roles of Bio-safety Officers across the EU, building on existing work and discussions which have taken place within the European Bio-safety Association. It would be very difficult to get complete registers due to the sensitivity and the commercial dimension of some of the work being undertaken even in the civilian field.

**Minimum standards and procedures**

On minimum standards and procedures, the exact purpose is unclear of ‘an agreed EU list of “identified bio-agents” with a specific focus on potential terrorist misuse’ (second bullet point). Several lists already exist. The Australia Group lists have been developed in the context of harmonised export controls for AG participants; and there are also publicly available and non-public classified lists for various purposes. However, these may not be the most appropriate basis for an EU bio-preparedness list. Caution is also necessary given that the existence of such a list, if not adequately protected, might only draw such bio-agents to terrorists’ attention. Furthermore, placing a biological agent on a list may make more difficult research into the agent and into ways of dealing with it.

The fourth bullet point suggests ‘Systems where stakeholders report nationally on types of life science work that is being performed involving hazardous bio-agents usable for terrorist purposes’. The annual submission of politically binding “Confidence Building Measures” to the BTWC already captures some of this information for specified types of work (facilities handling agents at bio-safety level 4, work under national biological defence R&D programmes, and on licensed human vaccine production facilities). But we recognise that there may be a lot of other potentially relevant work not captured in this way.

We would like more clarity on how the sixth bullet point—a European or possible future international system for certifying researchers and facilitating secure and safe exchange of samples and sensitive research results—would add value or affect existing exchange arrangements.
The seventh bullet point concerns the international exchanges of researchers and inflows of experts as well as students from third countries into the EU. The UK already has in place a light-touch vetting scheme for postgraduate students from third countries who wish to study sensitive proliferation subjects. This has been drawn up after extensive consultation with academia to ensure that it does not negatively affect our competitiveness but does provide the UK with a reasonable security measure. Harmonisation among all MS is unlikely but an EBN could coordinate transfer of best practice across the EU. We would encourage those Member States without similar schemes strongly to consider implementing one.

Development of standards on record keeping could include details of the work of individuals. This could facilitate audit of both subject areas and people.

Q11. Should common minimum bio-standards and the exchange of best practices be developed at the EU level?

Yes, provided that their introduction avoids unnecessary bureaucracy. We envisage these could in practice be like an ISO standard: i.e. we would expect people to strive to meet or exceed them. However, we might have to accept that they could not be universally imposed given different State requirements and the involvement of the private sector. The issue then would be of funding; would Member States require financial support to enable them to reach the prescribed standard? On the other hand, would such standards require sanctions against non-compliant States in order to be effective? What level of clearance would be needed? This needs more thought, but could be explored in relation to a specific limited listing of biological agents.

Q12. Would you be interested in developing rules for national certification and registering of facilities and researchers which could facilitate European and international exchange of samples and expertise?

The research community could contribute scientific expertise to any discussions. We would have to recognise that we might not be able to curtail exchanges between private “non-certified” companies even if certification schemes were in place. To work, such schemes would require a network of other measures e.g. obligations not to supply materials to non-certified agencies; and such measures could severely constrain genuine research. What would be the significance of accreditation or of its absence? We are interested given that most countries are likely to place limitations on exchange of material and expertise relating to agents with bio-terrorism potential.

Q13. What should be included in national registers—agents, facilities, activities—ensuring that there are no loopholes and that the security and oversight requirements avoid damaging health, safety, research or industrial activities?

In the UK these registers are already in place. If there is a demonstrable threat of malicious use of research facilities then such registers may have a deterrent effect; but they would have little impact on the determined individual who was already in a position of trust. This is also true of Q14 except that Member States will want to security-clear any officials working on defensive countermeasures. Some countries could do with increased analytical capability at bio-safety level 4. Agents, facilities and their purpose should be included in such registers; and this requirement should apply to all public and private sector laboratories.

Q14. Should a limited number of bio-researchers possess security clearance? If so, on what basis would you identify them?

The question as formulated leaves “security clearance” undefined. It is therefore unclear and may be unanswerable. As a matter of good human resources practice, appropriate levels of screening should be in place including regular review; but circumstances vary depending on whether or not there is access to classified information. A limited number of scientists already have security clearances—for example where they work in government facilities. The principle should be that those requiring clearance are so cleared. However it would be impracticable to extend this to the commercial or academic sectors. More importantly, it would be of very little value in national security terms. It would be more practicable to ensure all those working in the commercial or academic sectors had basic security and legal awareness. This could be part of courses or professional employment standards. Only if clear outcomes are identified will anything substantive be delivered. However, the issue is a responsibility of individual institutes and companies. Registration as under Q13 above could identify the “researcher” where an agent has bio-terrorism potential. Any changes should be proportionate and balance need for researcher mobility with the potential threat to security.

Q15. Should a specific and limited number of laboratories, health institutions, production establishments, pharmaceutical and food-processing plants be accredited on the basis of compliance with minimum security standards?

A robust licensing system already exists in the UK. The EU may have a role in ensuring that minimum standards are maintained in member states. Existing systems that are fit for purpose should not be replaced. Individual member states should be able to “gold plate” EU regulation. However we are not sure how this
would help. Ideally, all facilities should be licensed or accredited according to national standards. Ideally, we might seek to raise those standards universally by adopting EU minimum standards and accreditation; but the question seems to pre-suppose that this type of accreditation then dictates function. This would be difficult if not impossible—in the commercial sector at least—unless there is accompanying legislation. One can foresee that agreement to common legislation on this point would be very difficult to achieve. We are not sure that such accreditation would happen. Ideally, any institution or organisation working with agents from a specified listing should be accredited prior to commencement of work.

Enhancing Analysis and Security Issues Related to Biological Research

Developing a European analytical capacity for reducing biological risks

With regard to modelling, opportunities to share data sets should be promoted. The modelling community are always seeking more data to test the various models for disease spread and effectiveness of countermeasure strategies. There is a suggestion that modelling capability should be spread to those countries where it is poorly developed. This would enhance existing models and allow their refinement to specific national situations. Modelling activity in the Universities, and the potential role of ECDC in this field, should be explored and strengthened as appropriate including, for example, by quality assessments through peer review.

Q16. Do you agree that an enhanced EU-level capacity for analysis of biological risks is necessary or is the present situation satisfactory?

It is important to distinguish the capacities for analytical modelling and those for laboratory analysis. A high bio-safety laboratory is not necessarily required in every Member State. However, improved abilities rapidly to detect and identify a biological agent, e.g. using PCR techniques, would be highly desirable particularly in instances of disease outbreak or criminal or terrorist activity. More generally, risk assessment processes are vital. There are already EU standards for risk assessment in the form of the Pest Risk Analysis issued by the European Plant Protection Organisation. These are currently used to assess the impact of a pest in an outbreak and to determine the measures needed. There does not seem to be any other EU wide risk-assessment to provide the evidence base for initiatives in this area. Enhanced EU-level capacity for risk analysis is necessary, and should be developed to include a range of terrorist threats and natural hazards. This is a matter of specific interest for some laboratories and research bodies.

Q17. Should there be EU funding for joint training and awareness raising?

The benefits of this will not be clear unless there are precisely framed objectives, a proper risk assessment, a capability gap analysis, a co-ordinated response, a target audience and thus added value. There are already a number of EU funding streams that might well cover such liaison. However there will be no “easy wins” in this area. National funding is relatively limited or non-existent in some states.

Q18. Should EU-level lists of biological agents of special security concern be developed jointly by the Member States and the Commission?

A single or core list of organisms, properly coordinated at international level, would be helpful and, on some views, even of the utmost importance. Individual member states should be able to add to the list at national level. There is at least some scope for fusing lists of agents included in counter-proliferation arrangements with lists of toxic industrial chemicals and other bio-hazards, including GM organisms, assessed as feasible materials for deliberate malicious attacks. However, the joint assessment would rely on a joint risk assessment. It would be important to articulate for what purposes such lists were to be developed e.g. in order to facilitate informing, or in handling security procedures; or for the purposes of import, export or other trade; and to be clear about terms which are most likely to be of value to terrorists. It might be difficult to reach a consensus on a comprehensive list. A more productive line might be to look at classes of agents; but even in this case we would need to define their context. Public funding could be made conditional on the use of such a list. We are inclined on balance to suggest that this approach is of secondary importance to a push to drive up minimum general security standards.

Q19. If you believe that each Member State should have its own pathogen lists, do you agree that interaction with other Member States on this topic could be beneficial for your organisation?

See answer to Q18.

Q20. Is the current level of research activities on the bio-preparedness sufficient in the EU? Which research activities should be prioritised?

The area of biological detection is particularly challenging—but of critical importance—especially in tackling a malicious biological incident involving a covert release. There is much work currently in hand, but further and well-targeted research would be highly valuable in rapid early warning environmental monitoring systems
and in systems for incident early detection and identification. Reliable and easily administered pre-symptomatic tests for those potentially affected by biological agents would greatly help to assess immediate or long term medical care needs. Mobile non-laboratory-based detection methods deployable at the “front line” are deficient for most biological agents of security concern. There is a case for an EU research strategy in this field, and in particular also for funding of work on detection of human bio-markers of anthrax infection.

Security issues related to biological research

There is an opportunity here to look at the regulatory framework for fast-tracking new vaccines.

Q21. Should public and private funding for research on bio-substances be made conditional on the compliance of bio-standards?

Compliance with relevant regulations is an explicit condition of UK Research Council, Wellcome Trust and Public Sector Research Establishment funding. For the BBSRC, MRC and Wellcome Trust, applicants, peer reviewers and referees are asked to consider each application’s potential for misuse in accordance with the joint statement on misuse of research. Each funding body has developed a mechanism for dealing with any issues so raised. Most funding bodies require evidence of the bio-safety and bio-security track records of applicant organisations. However, the question as posed is hypothetical since such bio-standards have yet to be established; and it is open to question whether security vetting of personnel should be included in their scope.

Q22. Do you agree that a publication procedure should be applied where sensitive biological dual-use research should be published in two versions:—a public version with no publishing restrictions (without sensitive content); and—a restricted version containing the sensitive parts of the research with access only for relevant bio-stakeholders?

No: all results should be in the public domain unless there is a specific reason why they should be withheld. Full and free exchange of the results of scientific research is necessary for scientific progress. The alternative could be total censorship by the funding body. It would also be difficult to define what was meant by sensitive. From a security perspective this is highly desirable; but it is not necessarily enforceable and may not be feasible. It is unclear who would determine what should be classified or otherwise. Experience suggests that the academic community would strongly resist any curtailment of their ability to share knowledge. It would be difficult to ensure implementation if such a procedure were mandatory.

Q23. Could the EBN assist in the development of bio-security and bio-safety guidelines for publicly funded research?

Any activity in this area should be coordinated with and not duplicate existing activity e.g. that of the European Bio-safety Association. It would be difficult to ensure implementation if such guidelines were mandatory. The ECDC should be engaged in any such activity.

Professional code of conduct

This relates directly to a topic to be considered as part of the 2008 BTWC inter-sessional work programme. We would encourage the development of codes of conduct or codes of practice, but have generally taken the view that they should be developed from the bottom-up by the scientific community itself, not imposed by governments. There is much to support the idea of mandatory academic courses but in practice we recognise that there would be variable adoption of such courses across the European tertiary education system. Again, the work of the Organisation for the Prohibition of Chemical Weapons and the International Union of Pure and Applied Chemistry (IUPAC) could be used to inform the debate on this subject. We agree that a culture of awareness and compliance with bio-standards should be part of all EU-funded threat reduction programmes such as those involving the redirection of former weapons scientists. If existing codes of conduct and guidelines on good practice for scientists were successfully adopted then there might be no need to adopt EU-level professional codes.

Q24. Should mandatory academic courses on bio-standards and best practices become part of the university curriculum in the field relevant to life sciences?

This is a deficiency in most academic courses. However, the issues differ between undergraduate and post-graduate education. The UK Research Councils and the Wellcome Trust do not fund undergraduate education but, at post-graduate level, support in principle developments that encourage students to think about wider implications of their work. Any new training about bio-safety should be built where possible into existing courses. Scientists and students working in particularly high risk areas should have tailored relevant education. Without an agreed code of practice and some agreement on curriculum content it might be difficult to secure voluntary acceptance by the universities and professional bodies.

1 http://www.bbsrc.ac.uk/society/accountability/position_statements/joint_misuse.html
Q25. Should researchers in life sciences be obliged to adopt a professional code of conduct?

Codes of conduct have value in raising awareness of issues, and are being devised in some areas. The professional and post-graduate research community support the Universal Ethical Code for Scientists. Enforcement of codes and sanctions should be carefully considered if adoption were to be mandatory. There is potentially a need to review research findings before their publication, and to consider any arising ethical, governance and safety issues. Without an agreed code of practice and some agreement on curriculum content it might be difficult to secure voluntary acceptance by the universities and professional bodies.

Q26. Should the above-mentioned professional code of conduct be developed at EU level? If so, by whom?

The EU could have a role in encouraging the development of codes within member states; however, a professional code of conduct does not guarantee results. Therefore, we should use existing ECDC systems and enhance them, or possibly push their acceptance at national level.

Improving Surveillance Capacity

The entry into force of the International Health Regulations under the aegis of WHO is now leading to improvements in global disease surveillance. Some of the Paper’s proposed measures may help to strengthen BTWC provisions for public health including rapid identification of deliberately released disease-causing agents; and these issues will also be addressed by the BTWC in 2009. The UK life sciences may be able to contribute ideas for innovative surveillance technologies. The interaction of national networks of laboratories with each other could improve coordination and enhance bio-preparedness at EU level.

Early warning systems are improving but there are too many systems and a lack of uniformity. Consequently, we have to monitor them all with appropriate use of epidemiological methods and to analyse the output.

Q27. Each Member State depends on the bio-preparedness of others. In view of this, should the current early warning mechanisms within the European Union and Member States be further adapted? If so, in what respect?

Yes, but taking into consideration work being done in other nations and groups. The WHO, ECDC, OIE are best placed to detect and identify early disease outbreaks. The existing mechanisms for early warning of the emergence of animal disease or of antibiotic resistance are activated through their surveillance networks. Further investment in these mechanisms would be useful for specific agents.

Q28. How could the EU coordinate the different initiatives, at national, NATO, G7 and WHO level in order to increase the overall consistency and effectiveness of an EU capability?

If the EU is to add value through its coordination efforts, these need to be well planned and implemented. It is agreed that there should be neither standing forces nor EU public health stockpiles [see answer to Q.34], in which WHO has the necessary experience. The EU should be aware of other international initiatives, and not seek to create them where not needed. Work on this issue should concern early detection, warning, and analysis along with cross-border agreements and related issues.

Q29. Do you consider that coordination of existing warning and detection capabilities, as well as the exchange of best practices in bio-preparedness, should be enhanced at EU level?

It is unclear whether this concerns animals, humans, or both; but in either case these need good planning and implementation, and a focus on the basic principles. The EU pandemic influenza exercises were good. Others have not been well planned. We advise against ambitious teleconferences between 27 countries where background noise can impede the response.

Q30. Should the EU look into the possibility of developing a capacity for test detection tools on live and dangerous substances?

It is agreed that the EU should investigate this by first mapping existing capacity. This should be feasible under current funding mechanisms. The EU might find the UK Government’s Foresight initiative work on Detection and Identification of Infectious Diseases helpful in this context. The question is not entirely clear; but it is unlikely that a single EU capacity could service the varying needs of all Member States. However, such a facility could be useful to those countries which are at risk and do not have their own live-agent testing facilities. There are significant environmental issues to overcome. The USA and Canada rely on remote areas unsuitable for agriculture which may not be identifiable within the EU. EU funding to research common detection needs might be much more beneficial. There is significant capacity in some countries e.g. the Netherlands; but this is much wider than an EU initiative and depends on science and manufacturing capability, tax regimes and other MS factors.
Response and Recovery

We agree on the importance of good contingency plans, and of regular exercises to assess whether measures in place are adequate and appropriate. We also agree that we should try to learn from public-private business models in other countries, as discussed in the paper. The UK pharmaceutical sector and, to a lesser extent, the bio-processing and contract manufacturing sectors have global perspective and reach. This puts them in a powerful position to be heavily involved in scaling-up vaccine manufacture for entire populations.

Exercises and training are currently a growth area, and accepted as the best way to improve preparedness. The weak link is often in ensuring that the identified lessons are learned. The link with training needs to be strengthened. Often missing is the audit needed to confirm that recommendations have been implemented. How to introduce an acceptable audit process will be a challenge.

Q31. Should cooperation among relevant authorities and agencies at Member State and EU level be improved? If so, how?

There could be greater liaison between animal health, human health and food-related policy divisions and relevant research funders in the specific area of bio-preparedness. It is important to consult the full range of stakeholders so as to ensure added value.

Q32. Are regular exercises and training courses a good approach to enhance bio-preparedness or should other additional actions be pursued?

At this stage a priority is research and to improve general standards. Exercises are of very limited value where significant capability gaps exist. Training and exercises are only viable if there are plans and procedures in place. It would be sensible to promote the development of harmonised plans before investing in costly exercises. However, at national level the focus is predominantly on testing how e.g. a city copes with the deliberate or accidental release of an agent; more emphasis is needed on prevention of agents or substances being released. Again, it is important to consult the full range of stakeholders so as to ensure that such activities add value.

Preserving and developing a European response to biological risks and threats

No general comments.

Q33. Do you agree with the need to build up a European capacity for developing medical counter-measures including vaccines and prophylactics?

We agree with the comment that the private sector will not be able to build sufficient capacity for making large amounts of vaccine quickly if there is no natural market for such a vaccine.

Q34. Do you agree that the creation of limited EU solidarity stocks, as already exist for animal health, supported by Community funding, would be a way forward?

In general the UK doubts the value of EU stockpiles over and above those developed by Member States for public health. However, there may be a case for limited stocks or a “virtual stockpile” of vaccines against certain agents.

Q35. Are the provisions already in place, such as antigen and vaccine banks, or reagent banks, sufficient?

No comment.

Letter from the Chairman to the Rt Hon Ed Miliband MP

Sub-Committee F of the Select Committee on the European Union considered at a meeting today a letter which Gillian Merron, MP wrote to me on 29 November 2007. Since she has now moved to the Department for International Development, I am writing to you simply to say that we are very grateful to her for having enclosed the Government’s response to the Green Paper. We are also glad to know that the Cabinet Office will be taking up with European colleagues the issues of the protection to be accorded to those in the front rank of any response to a biological hazard, and the importance of rapid pathogen identification.

30 January 2008
BORDER AGENCY

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

On the 3 April we launched the new UK Border Agency as a shadow agency of the Home Office. The agency’s purpose and objectives are set out in its first business plan. That purpose is clear. It is to secure our border and control migration for the benefit of our country, protect our national interests; prevent border tax fraud; smuggling and immigration crime; and implement decisions quickly and fairly. The agency will deploy unprecedented resources in pursuit of its goals.

The new agency will unite the work of the Border and Immigration Agency, Customs detection work at the border from Her Majesty’s Revenue and Customs (HMRC) and UKVisas from the Foreign and Commonwealth Office (FCO), to create an organisation with a global reach, a budget of over £2 billion, 25,000 staff, and operating in local communities, at our borders, and across 135 countries worldwide.

By working in partnership with HMRC and the FCO, the UK Border Agency will contribute to the collection of £22 billion in tax revenue and the facilitation of international trade worth £600 billion per annum.

The Agency will shortly deliver new cross-conferrred powers to over 1,000 front line officers. In addition, staff in England and Wales will be equipped with powers as set out in the UK Borders Act. Passengers and goods will now be checked at a single primary line.

The Agency has agreed a new relationship with the Police at our ports and airports, and the Home Office is working closely with Association of Chief Police Officers for England, Wales and Northern Ireland to consider how policing may be best organised to deliver a deeper level of integration at the border.

We are discussing with the Scottish Devolved Administration and the Association of Chief Police Officers in Scotland ways of strengthening working relationships between the Scottish police service and the new agency taking into account the devolved nature of policing in Scotland.

The new Agency will be more powerful than today’s separate forces and will therefore deliver on tougher targets. The business plan that we have published includes the following goals:

- Expel 5,000 FNPs from Britain, up from 4,200 last year.
- Sustain last year’s increase in the seizure of class A drugs by seizing at least 2,400 kgs of cocaine and 550 kg of heroin by April 2009.
- Increase by 50% the number of asylum cases concluded in less than 6 months.
- Extend the UK’s visas regime to cover a larger proportion of the world’s population.
- Increase our detention capacity by 20% over the next two years to help us increase the number of immigration offenders we can remove from the country.

The Business plan can be found at: http://www.ukba.homeoffice.gov.uk

We are committed to keeping you updated on our plans and programmes.

24 April 2008

CONTROL OF SYNTHETIC DRUG 1-BENZYLPIPERAZINE (BZP) (11974/07)

Letter from the Chairman to Vernon Coaker MP, Parliamentary Under Secretary of State, Home Office

Thank you for your letter of 16 October 2007 which Sub-Committee F of the Select Committee on the European Union considered at a meeting on 14 November 2007.

As you know, the Committee cleared this document from scrutiny at a meeting on 10 October. They were nevertheless very glad to be told of the advice of the Advisory Council on the Misuse of Drugs as to whether BZP should be subject to the measures of control proposed by the Commission, and are glad that the Government is following this advice in supporting the proposal.

16 November 2007

2 Correspondence with Ministers, 11th Report of Session 2008-09, HL Paper 92, p 263.
COOPERATION BETWEEN THE SPECIAL INTERVENTION UNITS OF MEMBER STATES IN CRISIS SITUATIONS (13534/07)

Letter from Meg Hillier MP, Parliamentary Under Secretary of State, Home Office, to the Chairman

You will have seen my Explanatory Memorandum (EM) of 8 November on the above Council Decision. I thought it would be useful to explain the background behind the negotiations and what was discussed at the Justice and Home Affairs (JHA) Council on 8 November.

A general approach was reached at the JHA Council based on the text, 13534/07, deposited with Parliament on 17 October. I am sorry that the EM was not deposited in time for your committee to consider this proposal before then, but I clearly stated at the Council that the UK has a parliamentary scrutiny reserve.

I thought it appropriate for the UK to participate in a general approach at this time because we are content with the general aims of the proposal as it stands. The voluntary nature of the proposal means that while the impact on the UK will be minimal other Member States with limited capacity to deal with crises may derive significant benefit from it. The UK does not intend to participate at this time, but could choose to use this instrument in the future if considered beneficial.

The European Parliament is also yet to consider this proposal and its opinion is due in January. The Council will need to consider the EP’s opinion once it is delivered and any concerns you may have about the Decision can be taken into account whilst we await the European Parliament’s opinion.

We have reassured your Committee in the past that we would not accept any measure that imposed obligatory European-wide arrangements for policing events involving a potential risk of public disorder. Our position remains that cross border police activity at such events, at least as far as the UK is concerned, must be undertaken on a bilateral basis.

Previous discussion at working group level centred on the intention to cover public order scenarios within its scope. This was unacceptable and we were successful in removing mandatory and public order references from the document whilst maintaining a scrutiny reservation.

However, the proposal has now re-emerged with the public order elements removed. The focus of the document is very much on providing a recommended framework for circumstances where one Member State invites another to assist with the deployment of a special police intervention unit expert in dealing with specialist circumstances like hijacking and hostage taking.

This draft Decision will be a positive step forward for many Member States who do not possess a great deal of experience in such scenarios and will formalise the current practice whereby specialist UK police units endeavour to share best practice with police forces across Europe.

13 November 2007

Letter from the Chairman to Meg Hillier MP

Sub-Committee F of the European Union Select Committee considered this document at a meeting on 28 November, and also considered your letter to me of 13 November 2007, for which I am grateful. The Committee decided to clear the document from scrutiny.

We are grateful to you for repeating your assurance that the UK would not accept any measure which imposed obligatory Europe-wide arrangements for policing events involving a risk of public disorder.

The Explanatory Memorandum is dated 8 November 2007. On that day, as you explain in your letter, the Government participated in the agreement of a general approach at the JHA Council. As you know in our view, though not in yours, this constitutes a scrutiny override. The fact that you made clear that the UK has a Parliamentary scrutiny reserve does not in our view affect this. You say that when the Council meets in January to consider the opinion of the European Parliament, any concerns we have can then be taken into account. In fact we have no concerns; but if we had, it would in our view not realistically be possible for the negotiations to be re-opened now that a general approach has been agreed.

Once again I draw to your attention chapter 2 of the Annual Report of this Committee for 2007, published on 1 November (35th report of the session 2006–07, HL Paper 180), and in particular paragraph 127 in which we encourage the Government to review its position on general approaches.

29 November 2007
CRITICAL INFRASTRUCTURE PROTECTION (16932/06, 16933/06)

Letter from the Chairman to the Rt Hon Tony McNulty MP, Minister of State, Home Office

Thank you for your further letter of 26 October 2007, which Sub-Committee F of the European Union Select Committee considered at a meeting on 28 November. We much appreciate your keeping us up to date with the progress of negotiations.

As you know, this Committee is particularly anxious that there should be no obligation imposed on the United Kingdom to share security information where this is neither necessary nor desirable. We are glad you are continuing to press this point in the negotiations.

You will be aware of the recent Resolution of the NATO Parliamentary Assembly on NATO’s role in civil protection, calling on NATO to promote closer cooperation with other international organisations, including the EU. This of course is highly desirable, but again not something that needs legislation.

You refer to “constructive solutions” proposed by the United Kingdom negotiators. We would be interested to know what these are, if this information can be released without prejudicing the course of the negotiations.

We will continue to keep these documents under scrutiny, and would be grateful if in due course you could keep us informed of the further progress of negotiations.

29 November 2007

Letter from the Rt Hon Tony McNulty MP to the Chairman

Thank you for your letter of 29 November regarding the above documents.

You asked if I could let you know about the “constructive solutions” the UK has proposed. These solutions have centred on the security of information and the proposed production of a “list” of European Critical Infrastructure (ECI).

The UK has proposed an ECI designation process whereby Member States will have meetings to agree upon the designation as ECI of infrastructures identified as potential ECI, with no need to produce a list of such ECI. The knowledge that a specific asset has been identified as ECI shall be kept amongst only those Member States who it has been agreed are affected by the ECI—even the Commission will not be informed as to the exact identity of an ECI. This achieves the aim of the Directive in designating ECI, but avoids the security risk associated with creating lists of ECI.

Additionally, we have sought further clarification in article 7 to confirm that the sectoral reports will not require Member States to disclose any specific information about vulnerabilities or threats to ECI. These reports will be at a sectoral level, will not refer to any specific ECI and will only provide summary data about the sectors. Finally, Member States will only be required to provide reports for the sectors in which they actually have ECI.

I must stress that, as you are aware, whilst the current draft reflects the proposed solutions that the UK has put forward, they are still under negotiation and are liable to change. That said, the Directive as currently drafted goes some way to resolving the UK’s previous concerns on these specific issues.

21 December 2007

Letter from the Chairman to the Rt Hon Tony McNulty MP

Thank you for your further letter of 21 December 2007 which Sub-Committee F of the European Union Select Committee considered at a meeting today. We are grateful for the details of the constructive solutions proposed by the United Kingdom negotiators.

We have always strongly supported you in your opposition to the principle of EU involvement in the protection of critical infrastructure. As we have told you, in our view both the principle of subsidiarity and common sense suggest that these are matters best left to the Member States involved. Additionally we believe it is unnecessary and undesirable for the security information involved in the protection of critical infrastructure to be disseminated more widely than is essential.

We are accordingly very concerned to read in your letter that “the Directive as currently drafted goes some way to resolving the UK’s previous concerns on these specific issues”. From this it sounds as if you may be softening your opposition to the principle of having EU law in this field, and beginning to argue only about the detail. We hope that we are mistaken about this. However we note that the Slovenian Presidency have put adoption of the draft Directive on the agenda for the June JHA Council. This of course would require

3 Correspondence with Ministers, 11th Report of Session 2008–09, HL Paper 92, p264
Home Affairs (Sub-Committee F)

unanimity. We would be glad to know what line UK negotiators are presently taking on the principle that these are matters which should be left only to the Member States involved.

We will continue to keep these documents under scrutiny.

30 January 2008

Letter from the Rt Hon Tony McNulty MP to the Chairman

Thank you for your letter of 30 January relating to the above documents.

Throughout the negotiations on EPCIP the UK stance has remained clear and unchanged—that the EU should not be involved in issues relating to critical national infrastructure, and should not have access to critical national infrastructure security information.

We have worked to ensure that these principles are reflected in the draft Directive—inserting wording that specifies that critical national infrastructure is a responsibility solely for individual Member States. For this reason the UK continues to push for as high as possible a threshold for designation as European Critical Infrastructure. We have also continued to argue against the creation of any list of “ECI”, and continue to seek assurances that the EU will have absolutely no access to critical national infrastructure security information.

13 February 2008

Letter from the Chairman to the Rt Hon Tony McNulty MP

Thank you for your further letter of 13 February 2008 which Sub-Committee F of the European Union Select Committee considered at a meeting on 5 March 2008.

We are glad to have your assurance that you are not softening your opposition to the principle of having EU law in this field, and that the Government continues to oppose the creation of a list of European Critical Infrastructures and to seek as high a threshold as possible for the designation of ECI. We fully support you in this, and in your opposition to access by the EU to national infrastructure security information.

We will continue to keep these documents under scrutiny. They were first deposited for scrutiny over a year ago. We assume that, since the Slovenian Presidency are seeking to have a draft agreed before the end of June, you will deposit any further draft of the Directive in good time for us to be able to scrutinise it before the Government considers whether it should give its agreement.

6 March 2008

DATA PROTECTION FRAMEWORK DECISION (7315/07, 16069/07)

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

Sub-Committee F of the House of Lords Select Committee on the European Union examined this document, which is the final text of the proposal for a third pillar Data Protection Framework Decision (DPFD), at a meeting on 5 March 2008. The Committee also considered your letter of 26 July 2007, which helpfully addressed all the points we had raised with regard to the revised German draft (document 7315/07), and your letters of 15 and 31 October 2007 which announced an imminent agreement on the proposal.

We are disappointed that you were unable to provide the final text of this proposal before the general approach on it was reached on 9 November 2007 at the Justice and Home Affairs Council. Indeed, the final text did not emerge until 11 December (the date of the document under examination) and was deposited for Parliamentary scrutiny only on 28 January 2008. We are now looking at a text on which not only a general approach was reached four months ago, but political agreement has also now been reached. Your Explanatory Memorandum of 20 February 2008 suggested that the DPFD would be brought to Council for agreement towards the end of the Slovenian Presidency, after receiving the Opinion of the European Parliament which COREPER decided to re-consult on this text. Could you explain why final agreement of the DPFD has been so unexpectedly brought forward, thus overriding the consultation process with the European Parliament, as well as outstanding national Parliamentary scrutiny reserves?

With regard to the merits of what was agreed, we note that some crucial improvements to the text you highlighted in your letter of 26 July 2007 have disappeared from the agreed draft. We remain concerned that the rights of data subjects (Articles 16 and 17) are wholly inadequate; nor are we convinced that the rules on transfer of data to third countries provide sufficient safeguards, despite reference being made to “an adequate level of protection” in the third country concerned, given the sweeping derogations permitted by Article 14(3).
We are particularly perplexed at the relationship between the DPFD and data protection provisions in other instruments. We, like the European Data Protection Supervisor, had favoured a DPFD of general application to Third Pillar instruments—the lex generalis—on top of which other instruments could as necessary add further and stronger data protection provisions—the lex specialis. The evidence we received from Baroness Ashton of Upholland in the course of our inquiry into the Prüm Decision led us to believe this would be done, and your letter of 26 July 2007 reinforced this view. Now we find from Recital 24a and Article 27b that the DPFD is to have no application at all in the case of data exchanges following from Europol, Eurojust, the SIS, the CIS, or Prüm. If the DPFD is not to apply at all to exchanges of data under any of these instruments, it is hard to see what application it will have to data exchanges for police and judicial cooperation. Could you explain to us the reason for this exclusion, and just what data exchanges the DPFD will now apply to?

We do not doubt that standards are adequate in the UK, but the DPFD fails to ensure that these high standards are replicated across the EU. Are you able to reassure us that where a State with high levels of safeguards for national transmissions, such as the UK, transmits data to a State with lower safeguards, the relevant standard will not become that of the State with the weakest legislation, offering the least protection? Could you also inform us whether you envisage any changes to domestic data protection legislation to implement the DPFD?

The Committee would be grateful for your comments on the points raised above. The question of clearance from scrutiny does not arise, scrutiny already having been overridden.

6 March 2008

Letter from Bridget Prentice MP to the Chairman

Please accept my apologies for the delay in responding to your letter of 6 March 2008. My intention was to reply once the opinion of the European Parliament had been discussed and adopted, which I was expecting to happen in early April. However the Presidency have told us that they now expect the opinion to be adopted around 6 May. I appreciate it would have been helpful if my officials had sent you a holding response in the interim.

I am sorry that we were unable to deposit a final text before the General Approach was reached on 9 November 2007, and I hope that this letter serves to explain the circumstances leading to the current position.

It was the Portuguese Presidency’s intention to reach political agreement on the text. As you know a general approach on the substantive text was agreed at the November JHA Council, subject to further revision of the recitals and further refinement of the legislative quality of the text. Revisions to the recitals were agreed at the JHA Counsellors’ meeting on 30 November 2007. At the time the text was sent to the European Parliament, the UK was one of five member states that had retained its parliamentary scrutiny reservation. The reservation will remain in place until we have received the opinion of the European Parliament. That is expected very shortly (possibly next week), and it is not correct that the process of consultation with the European Parliament has been overridden. You will appreciate that we—along with all Member States—need to have lifted reservations by the time final agreement is given. I expect this to occur by the end of Slovenia’s Presidency.

You were concerned that the rights of the data subject were wholly inadequate (Articles 16 and 17) and nor were you convinced that the transfer of data to third countries provided sufficient safeguards. Insofar as the information for the data subject about the collection and processing of personal data by UK competent authorities is concerned this will be governed by the Data Protection Act 1998. Under Section 29 of the Data Protection Act 1998 where the disclosure of such information to him would prejudice the prevention and detection of crime or the apprehension or prosecution of offenders then the data controller does not have to provide it to him. There are also other exemptions within Part IV of the Data Protection Act that exempt the data controller from giving notice to the data subject. Also the right of subject access and the exemptions to that right under Article 17 of the Framework Decision are similar to those that can be found in Article 12 of the Data Protection Directive EC/95/46 and Section 7 of the Data Protection Act. Consequently, we do not agree with your analysis that the rights of the data subject are wholly inadequate, especially when compared with the rights of the data subject under the Data Protection Directive and the Data Protection Act 1998.

With regard to transfers of personal data to third countries the conditions for the transfer of data set out in Article 14(1) are cumulative. Article 14(3)(a) provides a derogation from the adequacy requirement but only in situations where either the national law provides for it because it is in the specific interests of the data subject or because it is in the public interest. Article 14(3)(b) provides a derogation where the Member State considers the safeguards which the third state or organisation has in place are adequate. A similar provision can be found in Article 26 of the Data Protection Directive.
When I wrote to you on 15 October 2007 I mentioned that Article 27b was an outstanding issue that was still to be addressed. Article 27b and the corresponding recitals state that where there is an existing provision in a Council Act then that will take precedence over the provision over the DPFD where it governs the same aspect. Conversely, where the Council Act is silent then the DPFD will apply. Recital 24a goes on to cite some of the specific provisions where the DPFD will not apply (e.g. Europol, Eurojust, SIS, Customs Information System, and parts of the Prüm Council Decision). This approach was adopted precisely because the provisions within those Acts “constitute a complete and coherent set of rules covering all relevant aspects of data protection … and they regulate these matters in more detail than the present Framework Decision”. In short, this approach will raise data protection standards across the piece, without threatening the specific measures needed in particular areas.

You ask in what situations the DPFD will apply if it does not apply to those instruments. The DPFD will apply to the exchanges of data which take place regularly between UK competent authorities and those in Member States. For example, it will apply where an EU citizen is arrested in the UK and the other Member State is requested to send offender’s details to the UK police. It will also mean that when details of UK citizens suspected of crime or arrested for criminal offences are sent to other EU Member States that we can be confident that the personal data that we send to them will be afforded an appropriate level of data protection.

Where a state with a high standard of data protection transfers data to a state with lower safeguards, then the appropriate level of data protection afforded to the personal data will be no lower than those minimum standards set out in the Data Protection Framework Decision. Under the Framework Decision Member States will be expected to match the standards in their domestic processing, and there is nothing of course to stop them from setting higher safeguards should they wish to do so. However, there is no question of other Member States exporting their data protection standards to the UK and visa versa. The UK, like many other Member States, has applied the Data Protection Directive to some extent to the processing of personal data by the police and judiciary in the criminal context. The adoption of this Framework Decision will remove the uncertainty that currently exists as to whether an EU Member State has appropriate data protection safeguards in this area. It will create greater trust between Member States about how personal data is handled and ensure that where data is transferred across borders that it will be subject to appropriate minimum standards of protection.

You asked whether we envisage any changes to domestic data protection legislation to implement the DPFD. The Data Protection Act implements much of the Framework Decision, although there may be a few parts that require implementation through primary legislation where the restrictions on processing under the Framework Decision are tighter than the current legislation.

I see from your letter that the question of clearance from scrutiny no longer arises. I hope that my letters have gone some way to explaining the circumstances but if you have any further questions then I would be pleased to answer them.

29 April 2008

EUROPEAN MIGRATION NETWORK (15240/05, 12481/07)

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

Thank you for your query of 17 October 2007 in which you seek clarification on the points raised in my Explanatory Memorandum of 26 September, in particular those concerning the proposed allocation of responsibilities between the Steering Board and the European Commission, the role of the proposed “scientific experts” and the criteria for the allocation of financial support between the National Contact Points. You also seek clarification on whether the Government will opt in to this measure.

Since the Explanatory Memorandum on the draft Decision was submitted to Parliament, the draft Decision has been discussed at two meetings of the Council Working Party on Migration and Expulsion (admissions).

During the recent negotiations, the UK Government and those of other Member States have made a number of changes to the draft Decision to ensure further Member State involvement in key European Migration Network (EMN) decisions, including the process of agreement of the annual work programme. For example, the text in Article 6 (4) of the draft Council Decision was amended to read “After consultation of the National Contact Points and approval by the Steering Board, the Commission shall, within the limits of the general objective and tasks defined in Articles 1 and 2, adopt the EMN’s annual programme of activities”.

4 Correspondence with Ministers, 11th Report of Session 2008–09, HL Paper 92, p.270
The Commission has clarified that the two “scientific experts” will have no voting rights on the Steering Board. It is envisaged that, in addition to assisting the Board, the experts may additionally commission peer reviews of the outputs of the EMN. The UK Government has proposed that there should be frequent rotation of expert members of the Board, to avoid undue influence by any one country or institution.

The key issue of how the available budget is to be allocated to National Contact Points is yet unresolved as no clear objective criteria were identified during the EMN’s pilot phase. The Commission has suggested that a minimum amount should be allocated to all National Contact Points with additional funding for those with a heavier work load (which would include the UK). The Steering Board will be tasked with setting the minimum and maximum grant level available to National Contact Points each year in line with the activities of the annual work programme.

At least one further meeting of the Working Party is planned; the UK Government will continue to make representations to address any remaining issues of concern.

The UK Government is still in the process of deciding whether to opt in to this measure in view of the recent changes to the draft Council Decision following negotiations in the Council Working Party. A decision is required by the end of this month.

9 November 2007

Letter from the Chairman to Liam Byrne MP

Thank you for your letter of 9 November 2007, which Sub-Committee F the European Union Select Committee considered at a meeting on 28 November. We much appreciate your keeping us up to date with the progress of negotiations.

We understand that the proposal is coming up for adoption and that the Government has decided to opt in to this measure. The Committee has therefore decided to clear this document from scrutiny. We would however be grateful to be informed how the outstanding issues such as those which regard the budget allocation have been settled.

30 November 2007

Letter from Liam Byrne MP to the Chairman

Thank you for your query of 30 November 2007, in which you ask to be informed of how the outstanding issues, such as those regarding the budget allocation, have been settled in relation to the draft Council Decision establishing a European Migration Network (EMN).

Since my last letter to your Committee regarding the draft Council Decision, the draft has been discussed at a further meeting of the Council Working Party on Migration and Expulsion (admissions) and at senior official level in the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA). A final text agreed as a general approach by all Member States in the Council is now available (see attached) (not printed).

It was decided at the Council Working Party meeting that the Steering Board will be responsible for deciding on indicative minimum and maximum budget levels to be allocated to each National Contact Point. These budget levels must reflect the Member States’ costs arising from the proper functioning of the Network, in accordance with Article 5. This procedure will remove the full responsibility of funding allocation from the Commission.

A number of our other key concerns were addressed at the Council Working Party meeting. I have listed these below.

— An explicit reference was inserted in the draft on the need for an external, independent evaluation of the Network in 2009 and 2012. The evaluation report will be accompanied, if necessary, by proposals for amendments to the Council Decision. These evaluations will further strengthen the accountability of the European Commission to Member States and the European Parliament.

— Our position was further strengthened by the repositioning of the ‘non-English language requirement’ clause from Article 5(2)(e) to the Preamble (8) and the loosening of the wording to “Each National Contact Point should also collectively have adequate expertise in … collaborating in a multilingual environment at European level”.

— We obtained assurances from the Commission that Member States, through the National Contact Point, will have an informal role in the selection of a future Service Provider (a formal role being outside what is feasible under Commission procurement procedures).

13 February 2008
EUROPOL: ESTABLISHING THE EUROPEAN POLICE OFFICE (5055/07, 10327/07, 14593/07, 15336/07, 16452/07, 6424/08, 6427/08, 6566/08)

Letter from the Rt Hon Tony McNulty MP, Minister of State, Home Office, to the Chairman

Thank you for your letter of 10 October 2007, which was received here on the 22nd.

In responding to your enquiry about managing the effects of increasing Europol’s remit beyond organised criminality, I thought it may be helpful to re-state the Government’s position. You may recall that when discussions on this document commenced earlier this year we had concerns about extending Europol’s remit as we wanted to ensure that Europol maintained its focus on organised crime.

Following the negotiations there are now a number of checks and balances in place which, we feel, should ensure that Europol maintains its primary focus. We believe Member States would benefit from being able to seek support from Europol to help investigate serious cross border crime, which may not have an obvious organised crime connection. Given the checks and balances we have negotiated, which include a requirement that any crime Europol is asked to investigate must involve at least two Member States, and changes that strengthen the Europol Management Board, we can accept the list of offences at the annex to the draft Council Decision for which Europol would be deemed competent to provide support. We recognise it is the same list of offences used in connection with the European Arrest Warrant but in respect of its application to Europol we see it simply as an extension of the list already annexed to the Europol Convention.

In the Government’s view the circumstances related to European Arrest Warrants are quite different to those where Europol is asked to support an investigation. While the former undeniably requires a degree of specificity we believe Member States could benefit from some flexibility of interpretation which could otherwise prevent Europol from providing support to criminal investigations.

The Government recognises that resource limitations make it impossible for Europol to respond to all the requests it receives for support. We do not see this situation changing radically, even if Europol’s funding mechanism was changed. This makes it more important that Europol concentrates its activities where it can provide the most benefit.

We have, as advised in previous correspondence, introduced language into the draft text to ensure that Europol only responds to a Member State request for support where the criminality being investigated has an international dimension involving at least two countries and where a common approach of the law enforcement authorities concerned is required. This will prevent any possibility of Europol becoming involved in purely national criminal investigations.

The Government recognises the current role of the Europol Management Board which is responsible for setting the direction of Europol’s investigative actions, and this is largely driven by the organised crime threat assessment as well as input from the Police Chiefs Task Force. The Management Board also has a role in monitoring Europol’s activities and it regularly examines the organisation’s workload. For instance if the analytical work files are not delivering what is required of them the Management Board can require Europol to close them down. Similarly the procedures for opening such work files are such that only the most serious types of crime would survive the scrutiny process.

We believe that the Management Board could do more to set the direction and monitor Europol’s activity, and subsequently take appropriate action as necessary. We also believe that there needs to be a subtle re-balancing of the role of the Europol Director in the Board’s affairs. To this end, we have negotiated amendments to the draft Council Decision. Although the fine details are still being considered by the Working Group, it is largely accepted that the Board would benefit from having a longer term arrangement when appointing a Chair. The six month rotating Presidency arrangement allows little time for the Chair to stamp any authority on either the Board or the Director. It is being proposed that the Chair of the Management Board would serve a term of between 18-24 months, and when appointed that person could no longer represent their national interests on the Management Board. This would be a big step in driving forward the development of the Europol Information System as well as providing more dynamism and focus to maintain oversight of Europol’s operations.

Negotiations of the draft Council Decision under the Portuguese Presidency are proceeding well. Discussion of Chapters II and III of the draft have just been concluded at the Working Group level and the Presidency intends to submit them to the November JHA Council for conclusion in the same way as Chapter I went to the June Council. They cover information processing and the exchange of data and include some significant improvements that deliver a sensible balance of providing added flexibility for Europol to store and exchange data whilst ensuring that new controls are in place to manage the exchange of personal data.

3 Correspondence with Ministers. 11th Report of Session 2008–09. HL Paper 92. p.270
Following the June JHA Council three expert groups have been established to examine the three areas of outstanding difficulty outlined in the Council Conclusions. These groups, made up of Commission and Europol experts and the current and incoming Presidencies, are examining (i) the financial implications of the Commission proposal and the issue of budget neutrality; (ii) the need for Europol to maintain a level of staff rotation and to be able to select some of its technical staff from a limited pool of applicants (from Member State law enforcement authorities)—the so-called “bold posts”; and (iii) the issue of privileges and immunities for Europol staff serving under the control of national authorities in joint investigation teams.

An implementation plan has been drafted which assumes that satisfactory solutions to the problems outlined above can be found by the early part of 2008. We will keep the plan under review in light of the emerging findings of the three expert groups. Thereafter it is intended that the Council Decision will be adopted by the end of June and come into force before the end of 2008.

This touches on your final point, the Reform Treaty. Provided it comes into force before the Reform Treaty, the Europol Decision will continue to have the same third pillar legal effects until such time as it is amended or repealed and replaced. Further, if the issues that currently put in some doubt the introduction of Community financing, and the subsequent application of the EC Staff Regulations and the EC Protocol on Privileges and Immunities can be resolved the Reform Treaty should have no direct bearing. The Council Decision that comes into force in 2008 would have implementing provisions included that introduced Community Financing (and the staff regulations and privileges and immunities) from January 2010, as agreed at the June JHA Council.

Now that discussion of the first three chapters of the draft Council Decision has largely been concluded, and considerable progress has been made on chapters IV, VI and VII, revised versions will be available shortly and we propose to deposit them all in November.

7 November 2007

Letter from the Chairman to the Rt Hon Tony McNulty MP

Sub-Committee F of the European Union Select Committee considered these three documents (10327/07, 14593/07, 15336/07) at a meeting on 12 December 2007. They also considered your letter to me of 7 November.

We are extremely concerned about the way in which these negotiations have been handled in the course of this year. The Committee first considered the Commission proposal, document 5055/07, on 21 February, and I wrote to you the following day listing a number of concerns of the Committee. Some of the more important related to the mandate and powers of Europol in Chapter 1 of the proposal. When I learned that you intended to seek agreement on a general approach on this chapter at the June Council I wrote to ask you what the consequence would be of the novel procedure of agreeing a general approach on part of a document. I repeated this concern in a letter of 12 July.

It is only in the last two weeks, having received your Explanatory Memorandum dated 28 November, that it has become clear that not only was Chapter 1 agreed in June, but Chapters 2 and 3 were agreed at the November Council, and Chapters 6, 7 and 9 were agreed last week. We are aware of your argument that the agreement of a general approach does not constitute a breach of the scrutiny reserve resolution. The agenda of the Council referred to “Finalisation of Chapters IV, VI, VII and IX of the Draft Council Decision”, which is sufficient comment on the status of the agreement.

We also note that you say discussion needs to be resumed on a number of issues. What is clear is that discussion needs to be resumed only where the Government, or other Governments, have indicated that they themselves have points they would like to raise again. There is plainly no more scope for issues raised by this Parliament or other national Parliaments to be considered.

We would welcome your comments on this general issue. In addition we would like your reply to these specific points:

— How is it arguable that the revised text of Article 4(1) limits the competence of Europol to consider serious crime which is not organised crime?

— What is the status of Annex 1? We raised concerns about some of the offences listed in that Annex in February. We have not been told whether the Annex has been discussed and, if so, whether it has been amended, nor whether it has been agreed. If there is a revised text, we have not been shown it.

— You say that the Government shares our concerns about the width of Article 50 on privileges and immunities. This article is in Chapter 9, which has now been finalised. The text is unchanged, except that it is now in square brackets. What is the significance of this?
We note that the Commons European Scrutiny Committee have invited you to give oral evidence to them about their concerns, which are very much the same as ours. We look forward to reading a transcript of your evidence.

The Committee are keeping these three documents under scrutiny. We are also continuing to keep under scrutiny document 5055/07, since this earlier draft is the latest draft (or at least the latest we have) of some parts of the proposal.

12 December 2007

Letter from the Rt Hon Tony McNulty MP to the Chairman

Thank you for your letter dated 12 December.

The Government has explained in previous correspondence why it feels it has been able to participate in a general approach on these chapters. We can understand that some of the terminology being used can be interpreted to imply that discussion on this text has ceased but this view is not supported by what the Presidency has agreed. There is very clearly an opportunity for further discussion at the working group level when this document returns early next year.

The incoming Presidency, in setting out its plans for the rest of the negotiation of this instrument, has made it clear that the chapters covered by the general approach will return to the working group early next year for further consideration. This is necessary to reflect the findings of the expert groups dealing with staffing issues, budget neutrality and privileges and immunities. In short, there is scope over the next few months to re-open the text, and not just that which is connected to the outstanding issues, before it moves to political agreement.

I am sorry if the approach we took in depositing the revised text caused any difficulty or misunderstanding. There was generally very little time between the text being issued and the Council meetings and rather than deposit individual chapters we thought it would be helpful to bring together a number of them, making it easier for the committees to get a sense of the emerging picture and to provide meaningful cross references between chapters. We did this in the knowledge that the general approach would not affect the scrutiny process or debar discussion on the text.

We are keen to work with the Committee to ensure that we deposit documents in the right way and I suggest that the Clerk to the Committee and Home Office officials discuss ways in which we can do this. We will deposit any further texts immediately they become available.

Turning to the three specific questions, you ask how the revised text of Article 4(1) limits Europol’s competence to respond to requests for assistance from Member States dealing with serious crime that is not necessarily organised. We believe that the revised text is a considerable improvement on the original in that it prevents Europol from getting involved in crime that occurs in just one country, however serious that crime might be. The text requires that the crime must have an international dimension. In consequence it will require the cooperation of the law enforcement authorities in those countries before Europol can consider getting involved. Europol exists to support Member State law enforcement, not the other way around. It will not instigate action on its own accord. In common with other Member States we believe the priorities of law enforcement authorities at a national level will limit involvement since all participants in the proposed investigation will first need to agree on the seriousness of the crime before they can start.

And finally, the text requires that the scale, significance and consequences of the crime must be taken into account. Apart from providing helpful guidance in the decision-making process to involve Europol in an investigation, we believe this offers a useful benchmark against which Europol’s activities can be measured by the Management Board.

This issue also needs to be considered in light of Europol’s available resources and the fact that its activities will be guided mainly by the organised crime threat assessment and the work programme agreed by the Management Board. The Government believes there will be relatively little opportunity for Europol’s involvement in serious (non-organised) crime. But the flexibility offered by this text can enable Europol to deploy its resources, to help resolve particularly serious crimes.

A significant majority of Member States at the Europol Working Group were content with the original text and the Government believes the revision is a good compromise. We are not optimistic about getting any further concessions. The scope for Europol’s involvement in non-organised crime has been further reduced following agreement at the Europol Working Group on 27/28 November that the proposed list of crimes at Annex I would be replaced by the list currently in force under the Europol Convention.
Finally you ask about Article 50. This is just one of a number of articles that will need to be reviewed again at working group level once the expert groups have reported and an approach agreed. The fact that the general approach on this chapter has been agreed does not preclude further discussion and revisions on any of the text in the chapter.

We will keep the Committee updated on the progress both of negotiations and the work of the expert groups.

18 December 2007

Letter from the Chairman to the Rt Hon Tony McNulty MP

Thank you for your prompt reply to our letter of 12 December and your update on the November Europol Working Group discussion, both of which we received on 18 December. Sub-Committee F of the European Union Select Committee considered these letters at a meeting on 16 January 2008.

We note again your assurances that a general approach does not mean the end of the discussion on the text with respect to this particular dossier, at least in the view of the current and the previous Presidencies. However, what a “general approach” means cannot depend upon the interpretation given by a Presidency—this would be highly confusing for the scrutiny process. It would seem, moreover, that the Government itself is not entirely clear about what it means: Meg Miller, in evidence to the Commons European Scrutiny Committee on 12 December 2007, said she believed that the current Cabinet Office guidelines were open to different interpretations but, as a general principle, “a general approach would not be appropriate, on something that is particularly significant” (HC 178-1, Q17). This entirely contradicts the attitude taken with regard to this particular dossier, the significance of which we believe is not in doubt. It cannot be that “general approach” means something with regard to a specific dossier and something else with regard to another. Will the Cabinet Office be issuing clearer guidance on this?

With regard to the issues of substance, we accept that the safeguards as to Europol’s involvement in serious non-organised crime are as good as they can get. As to the Annex, while reverting to the old list might be an acceptable compromise, could you assure us that any amendments to the list, which at present would be made by a Protocol to the Convention and subject to Parliamentary ratification, will continue to be subject to scrutiny? How will this be reflected in the text? Lastly, we take your point that the issue of the immunities and privileges under Article 50 is still pending, and look forward to being informed about what solution has been found.

We will shortly be examining new draft Chapter IV (relations with partners) which was deposited for scrutiny and look forward to receiving further progress reports on negotiations on other parts of the dossier. In the meantime, the Committee are continuing to keep these three documents under scrutiny, along with the earlier scrutiny document 5055/07.

18 January 2008

Letter from the Chairman to the Rt Hon Tony McNulty MP

Sub-Committee F of the European Union Select Committee considered the revised draft of Chapter IV of this proposal at a meeting today (16452/07).

The Committee agrees with you that the revised chapter is an improvement and welcomes particularly new Article 24, which we think broadly deals with the concern we had expressed, in our letter to you of 7 June 2007, that Europol was to have direct access to personal data from private parties. We would like, however, to raise a question with respect to the procedure for adopting implementing rules set out in Article 25. Decisions under this procedure determine important aspects such as the list of third countries and organisations with which Europol is to conclude agreements, and rules governing the communication of information, including personal data and classified information. Why is the Council, while acting by qualified majority, only to consult the European Parliament?

As you are aware, the Treaty of Lisbon, which is expected to be in force from 1 January 2009, gives the European Parliament co-decision power in matters which previously fell under the third pillar. In particular, Article 88(2) of the Treaty on the Functioning of the European Union (consolidated text), provides that the European Parliament and the Council determine, in accordance with the ordinary legislative procedure (i.e. QMV and co-decision), Europol’s structure, operation, field of action and tasks, including “the collection, storage, processing, analysis and exchange of information, in particular that forwarded by the authorities of the Member States or third countries or bodies.” How is Article 25 therefore to be reconciled with the powers given to the European Parliament under the new Treaty provision?
Chapter IV is closely linked to Chapter V, which deals with the data protection framework, the right to access data held by Europol, and the appointment of a data protection officer. We will, therefore, reconsider it in the light of the revised Chapter V when it emerges.

The Committee has decided to keep this document under scrutiny, pending receipt of the revised Chapter V and your comments on the question raised above.

30 January 2008

Letter from the Rt Hon Tony McNulty MP to the Chairman

Thank you for your letter dated 18 January.

You ask whether the Cabinet Office will be issuing guidance on what constitutes a general approach. You will be aware that the Cabinet Office has been looking at this issue alongside the work that the Deputy Leader has been pursuing on reforming EU scrutiny following the 2005 Modernisation Committee report and any impact on scrutiny arising from the Lisbon Treaty. We understand that this work will be concluded shortly.

The Government has made its position on general approach clear, that it does not constitute a definitive point of agreement in the legislative process and that it reserves the right to reopen a general approach in the Council of Ministers. The Europol negotiation is a good example where at any point between the conclusion of the general approach on various chapters of the legislative instrument and the return of the consolidated draft to the Council for political agreement, probably in June 2008, there is an opportunity for further discussion. That said, as Meg Hillier and I made clear at our recent evidence sessions before the European Scrutiny Committee we all need and require clarity on this issue of general approach. I look forward to what will be emerging from the consideration that the Government is giving to the issue of how to handle general approaches in the context of our scrutiny process.

I note you believe we have taken the issue of restricting Europol’s involvement in serious non-organised crime about as far as we can. We remain confident that Europol’s focus will remain on its core business, supporting law enforcement activity against organised crime and terrorism. Following the agreement at the Europol Working Group to adopt the list of categories of crimes currently annexed to the Europol Convention, it is our understanding that the list will be annexed to the Council Decision, and thus any changes would require an amendment to the Council Decision. This is on the agenda of the forthcoming Europol Working Group meeting and we will seek confirmation on this point. However I can assure you that any changes proposed to the annex in the future would be deposited for consideration by the Scrutiny Committees.

Finally, we expect proposals from the three expert groups dealing with budget neutrality, privileges and immunities and certain staffing issues to be presented to the JHA Council on 28 February and I will update the Committee as soon as I have something to report.

In addition, of course, we will keep the Committee updated on the progress of the negotiations.

31 January 2008

Letter from the Rt Hon Tony McNulty MP to the Chairman

Thank you for your letter dated 30 January.

You ask about the proposed text of Article 25, which deals with the procedures for, among other things agreeing the list of third states and organisations with which Europol should have an agreement for the exchange of data. You make the point that the decision making sits just with the Council, following consultation with the European Parliament. You ask how this can be reconciled with the decision making system introduced by the Lisbon Treaty, qualified majority voting and co-decision.

The proposed Council Decision is being adopted under the existing treaty arrangements, which provide for consultation with the European Parliament (Article 39 of the EU Treaty). We are satisfied that Article 25 is in accordance with these arrangements. Article 88(2) of the future consolidated text of the Treaty on the Functioning of the Union maintains a Treaty legal base for the establishment of Europol within the EU.

The legislative procedure applying in relation to that Article will apply when the Commission, or a group of Member States choose to propose a new initiative using it as the relevant legal base. When that happens, the European Parliament would have a co-decision role in determining the content of that new legal instrument. Until that time, however, and assuming it is adopted before the entry into force of the Lisbon Treaty, the proposed Council Decision will regulate the scope and workings of Europol.

You make the point that Chapter IV is closely linked to the following chapter, which deals with data protection and data security. Some progress is being made on Chapter V and I hope we can deposit revised text for scrutiny in the near future.
We will keep the Committee updated on the progress of the negotiations.

13 February 2008

Letter from the Rt Hon Tony McNulty MP to the Chairman

I thought it would be helpful to update the Committee on progress with this dossier.

There has been good progress this year on the discussions in the Europol Working Group on the remaining chapters of the draft Europol Council Decision and with the search for a solution on the three outstanding issues—the maintenance of staff rotation and bold posts; privileges and immunities; and budget neutrality.

You will have noted that Chapter V, which covers data protection and data security and Annex 1, the list of serious crimes for which Europol has competence to support Member States in their criminal investigations have been deposited with Parliament, and an Explanatory Memorandum will be deposited shortly.

Discussion has already moved onto the remaining two chapters, neither of which is particularly contentious. Chapter VIII deals with budget provisions and monitoring and while some amendments have been introduced, including a number recommended by the European Parliament following its debate earlier in the year, the Government has no concerns over the content. The same can be said of Chapter X, which sets out the transitional provisions. Most of this chapter is concerned with prescribing the procedures that need to be carried out before the Council Decision could come into force, and the discussion is focussed on making sure that all of the provisions are accounted for.

It is looking increasingly likely that the negotiation will be completed in March and the Presidency has just announced its intention to try and get political agreement on the consolidated draft at the April Council. While this would seem quite ambitious to us, an extra meeting of the Europol Working Group has been convened on 17 March to review a consolidated version of the draft Council Decision.

We will deposit this document as soon as it is issued, and the Explanatory Memorandum will detail all revisions to the text which the Committee has already reviewed. We have asked the Presidency for the consolidated text to be issued as soon as possible. Even so, we recognise there is not much time for the Committee to consider the final version with a view to clearing scrutiny in time for the JHA Council meeting on 17 April. But the only new text will be the two small chapters VIII and X, and there will be very few amendments to the text of the chapters that the Committee already has under scrutiny. It would be very helpful to the Government if we could be in a position to remove our scrutiny reserve on the draft legal instrument at the April Council. To this end Home Office officials are ready to provide whatever assistance will prove helpful to the Committee.

The Government is very pleased with the progress made on resolving the three outstanding issues. Two of the three outstanding issues have now been resolved, and good progress is being made on the third.

With regard to granting privileges and immunities to Europol officials operating in joint investigation teams the Commission has changed its earlier position, in response to concerted pressure from the Government. It has now agreed to bring forward a Regulation amending the EC Protocol on Privileges and Immunities (EC PPI) within the next few weeks. This will mean that Europol officials working in joint investigation teams will not be granted immunity from prosecution. The Government has also negotiated an amendment to the implementing provisions to ensure that the Europol Council Decision cannot come into effect until the Regulation amending the EC PPI has been adopted.

Finally the Government is pleased to note that the draft text of the Council Decision has been amended to ensure that privileges and immunities are no longer conferred on the members of the Europol Board.

Amendments to the text have also been agreed that assure the principle of staff rotation and the ability of Europol to identify reserved posts for officials of member state law enforcement bodies—the so-called ‘bold posts’. This principle has been further strengthened by an amendment whereby the Europol Director needs to seek the authority of the Management Board to grant contracts of an indefinite term to non-bold posts. This should provide a balance where key technical and administrative posts can be filled on a permanent basis while offering opportunities for rotation for non-specialist posts. It has also been possible to find an acceptable solution that resolves the problem introduced by the introduction of the EC staff regulation where a Europol official working in a joint investigation team is not generally permitted to take instructions from the Member State team leader.

This leaves just one outstanding issue, budget neutrality. The expert group investigating this issue has reported there are indications that a slight increase in staff costs could arise for the first few years but over time these costs should eventually fall. Consequently it proposes that the question of budget neutrality has been addressed. The Government has questioned the methodology employed and has sought clarification in two specific areas. The Commission’s figures are based on average staff costs, which are arrived at by averaging the costs of all 22,000 EC officials. We believe this might distort the staff cost figure for Europol as a distinct
organisation and have sought clarification. The other issue under question relates to pension costs. We expect to have resolved these issues shortly, but in general terms it is starting to look that even if budget neutrality cannot be delivered the overall cost increase might not be significant.

28 February 2008

Letter from the Rt Hon Tony McNulty MP to the Chairman

I indicated that I would write as soon as we had received and analysed the results of our enquiries to the Commission on the comparative costs of moving from direct funding of Europol to financing from the Community Budget.

First though it might be helpful to update you on the current state of the negotiation of the draft Council Decision at the Europol Working Group. A thorough review of the consolidated version, which was deposited with Parliament on 12 March, was completed on 17 March. A number of minor, but not substantive amendments were made.

In Chapter V (Article 27(1)) it was agreed that the Data Protection Officer would be appointed by the Management Board, reverting to the earlier approach, and that the independence of the role would be formalised in the implementing rules. In similar vein, in the following chapter (Article 36 (8—ebis)) the text was improved to ensure the independence of the internal auditors. And finally, there were amendments in Chapter X, transitional provisions, to improve the text, particularly where it dealt with the transfer of Europol staff contracts to EC contracts.

A final meeting of the Europol Working Group will take place on 27 March to review the amendments proposed at the previous meeting and to sign off the document to the Article 36 Committee.

This leaves the one outstanding issue, the matter of budget neutrality. In its response to the Government request for better comparative data on Europol staff costs the Commission used actual data for staff in post at the end of last year. From the additional information the Commission have provided it would appear that moving towards EC staff regulations would result in an approximate 4.9% (or €1.7 million per year) increase to the budget. Although data on actual allowances is not available at this stage, a comparison of average Europol and Commission allowances suggests that the move to EC staff regulations could actually reduce such costs.

In addition there are indications that this increase could be mitigated over time as the staff profile changes with the possibility of introducing lower graded contract staff to undertake the less technical duties. We also see more effective stewardship of the Europol staffing plan by the Management Board as a catalyst to drive down costs where possible. We also believe that the additional cost to Europol is not without some benefit. The introduction of the EC Staff Regulation will be warmly welcomed by Europol staff since it offers improved opportunity for permanent contracts, a bone of contention with the current regime. Such an opportunity is likely to reduce staff churn, with the consequential associated costs, will improve staff morale, and is likely to make Europol a more attractive organisation to work for.

We also looked at the pension arrangements to see what differences might occur following the introduction of the EC pension scheme. This is a very complex area and the Commission concluded that a meaningful comparison of the costs of the two schemes would be difficult to achieve given the differences between the schemes and the number of variables and unknown factors including the future demographics of the organisation and the numbers of staff that would opt-in to the new arrangements. A key difference between the two schemes is that the Europol scheme is a dedicated fund built up by contributions from both employer and employee. The EC pension scheme is not a fund. It does not rely on employer contributions and pensions to retired Europol staff who are employed under EC contracts would be paid from the overall EC budget. This is not expected to place a significant burden on the EC budget because in the main the pensions paid to retired staff are met from the contributions of current staff.

There are no plans to close the Europol pension fund and staff who retain their Europol contracts will continue to subscribe to the fund, as will Europol (who will continue to pay the employer contribution of 16.5% of basic salary). We recognise that in terms of budget neutrality the transfer of the obligation to pay future pensions from Europol to the EC budget does not of itself mean there is an overall cost saving. While extremely difficult to quantify it is clear that the overall costs of the EC pension scheme would be considerably higher than the Europol scheme.

But a major reason for this lies in the type of pension scheme it is. The EC scheme is indexed, as is typical of public sector pensions, whereas the Europol scheme is not. So, for example at retirement the payments from both schemes would be roughly the same, but as indexation kicks in and by the time the retiree has achieved
age 80 they could be getting more than 30% more pension than under the EC pension scheme. The EC pension scheme also offers better survivor’s pensions than the Europol scheme.

A simple cost comparison is really not possible and in terms of the much improved benefits of the EC pension scheme such an exercise would provide a crude distortion. We would see the introduction of an improved pension scheme as a significant benefit of the move to community financing. It will offer a much better deal for Europol staff, will improve morale and is likely to provide an incentive to join and stay with the organisation.

In considering budget neutrality, it is also relevant to take into account the financial impact to the UK of moving toward community financing of Europol. At the moment the UK contributes about €9.1 million a year direct to Europol as our share (based on 2006 figures). However payments through the EC budget would be subject to the abatement, which would allow costs associated with the shift to EC staff regulations far exceeding those anticipated, without increasing the UK contribution. Even taking into account the expected annual increases our net saving is expected to be considerable.

In conclusion the Government believes it has got as much as it is likely to get out of the negotiation as a whole. We believe we have got a good overall deal. We have put in place a balanced extension of Europol’s remit and its ability to collect and share information, introducing added flexibility with improved checks and balances. The enhanced role of the Management Board will improve efficiency and oversight. We have maintained the rotation principle and the continuation of bold posts for law enforcement officers and been successful in ensuring the status quo in terms of joint investigation teams. And while the staff costs to Europol will increase the overall impact is manageable, and we see a positive benefit with the opportunity for Europol staff to avail themselves of an improved pension scheme.

The Presidency will take the draft Council Decision to the April Council for political agreement and expects adoption by October or November. I understand the Committee is content for the Government to give its agreement to the proposal at the April Council, for which my grateful thanks.

27 March 2008

Letter from the Chairman to the Rt Hon Tony McNulty MP

Sub-Committee F of the European Union Select Committee considered the consolidated version of this proposal (6427/08), including the revised drafts of Chapter V and Annex I, at a meeting on 26 March 2008. We also considered your letters of 31 January 2008 (on the issue of the general approach), 13 February (regarding Chapter IV), and 28 February (reporting progress on negotiations). We are grateful for these, and also very grateful to you and your officials for having so rapidly deposited the consolidated text of the Council Decision and submitted an Explanatory Memorandum.

You informed us in your letter of 28 February 2008 that the Council intended to reach political agreement on the consolidated text at the Justice and Home Affairs Council on 17 April. As you are aware, the Committee has started an inquiry into all aspects of Europol which will include an assessment of the new legislative framework. We are therefore not in a position to clear the consolidated text from scrutiny. However, in reliance on paragraph 3(b) of the House of Lords Scrutiny Reserve, we are content that you should give your agreement to the proposal at the April Council.

The consolidated text has superseded the earlier texts (Documents 5055/07, 10327/07, 14953/07, 15336/07, 16452/07, 6424/08, 6566/08) which we therefore clear from scrutiny.

27 March 2008

EUROSUR: EUROPEAN BORDER SURVEILLANCE SYSTEM (6664/08, 6665/08)

Letter from the Chairman to Meg Hillier MP, Parliamentary Under Secretary of State, Home Office

Sub-Committee F of of the European Union Select Committee considered these two Communications at a meeting on 26 March 2008, and cleared both documents from scrutiny.

The Committee would however be grateful for more information on the role of FRONTEX in the creation of EUROSUR. You will be aware that the Committee has recently published a report on FRONTEX (9th Report of Session 2007-08, HL Paper 60). This Agency is already involved in extensive maritime surveillance operations. Could you explain to us in what way EUROSUR would add to the integrated surveillance system, rather than merely being a duplication of what FRONTEX already does or could be developed into doing?

We were also intrigued to read that in the long term EUROSUR is to link up with EUROCONTROL, and we wondered whether you could provide more information on this.

3 April 2008
Letter from Meg Hillier MP to the Chairman

Thank you for your letter of 3 April 2008 with additional questions on the Commission’s Communication on examining the creation of a European Border Surveillance System. I indicated in the Explanatory Memorandum that a number of the Commission’s proposals in respect of EUROSUR are at a very early stage of development. Unfortunately, this limits the information I can provide about the development, implementation and impacts of the proposed system at this stage.

I understand that the European Council Conclusions on the Triple Borders Package, including the EUROSUR Communication are anticipated in June 2008. The Commission has also signaled that it intends to issue a Communication containing a work plan outlining further steps towards the integration of all European maritime reporting and surveillance systems during the second half of 2008. Naturally, I will provide further advice on these proposals as appropriate.

The role of Frontex in the creation of EUROSUR has not been fully defined by the Commission. Clearly, the EUROSUR system, or ‘system of systems’ as it was referred to by the Commission, will need to acknowledge both Frontex’ responsibilities for the management of operational cooperation at the external borders of the European Union and the responsibilities of national police forces and other law enforcement authorities in tackling cross border crime.

To date, the Commission has assigned specific activities to Frontex in respect of the creation of EUROSUR. These reflect its current mandate of general border management, and its ability to specifically take measures related to operational coordination, exchange of information, risk analysis and research and development as relevant for border surveillance. The Agency will be commissioned to conduct a risk assessment of the external European borders by the end of 2008. The Commission has suggested that this assessment should set out which Member States may benefit from a more comprehensive surveillance system; a comparison of this assessment with the plans presented by the Member States themselves; and a report on the existing and required surveillance infrastructure in selected neighbouring third countries. The Commission has also suggested that Frontex could act as a technical facilitator in the process, liaising with service providers to procure satellite imagery on behalf of Member States and coordinating the sharing of equipment. Frontex will also act as a European Situation Centre and National Coordination Centre when EUROSUR is operational. Furthermore, the Commission stated its intention to establish a group of experts to produce guidelines on the role of Frontex in tasking and ensuring cooperation between national coordination centres.

The question of how EUROSUR will add to the integrated surveillance system rather than duplicate what Frontex does or could do in the future is more complex, in part because a detailed breakdown of EUROSUR’s remit has not yet been produced. The Commission has described how the EUROSUR proposal will form one element of the common European integrated border management system, whereas Frontex forms a different component of the system; it will be important to understand how the links between the EUROSUR and Frontex will work at an operational level, for example, the EUROSUR proposals regarding coordination centres expand on those made by Frontex for centres in the eight Member States forming the EU Maritime Borders in the Mediterranean Sea.

In practice, careful consideration will need to be given to the precise remit and interoperability of these systems as they are developed, to ensure that they are cost effective. As general provisions on border surveillance are contained in Article 12 in the Schengen Borders Code, consideration may need to be given to the nature of participation by the UK in EUROSUR. By proposing to phase the development of EUROSUR, the Commission will be in a position to ensure that Frontex and EUROSUR developments are complementary.

The Government notes that work is ongoing within EUROCONTROL to secure airspace from unauthorized use, intrusion, illegal activities or any other violation, as well as work on air traffic management. The Commission has announced that it will launch a technical study under the External Borders Fund which will include an analysis of how to link up EUROCONTROL with EUROSUR for the purpose of covering all relevant threats related to border surveillance in the long-term. These proposals are being monitored and we will provide further advice about the proposed link between these systems in due course.

Thank you for your questions on this matter.

23 April 2008

ILLEGAL MIGRANTS: PROPOSALS FOR A COMMON EU RETURNS POLICY

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

Thank you for your letter of 10 October 2007.

I am glad that you have now been able to see the full text of the Review of the UKIS Family Removals Process.

6 Correspondence with Ministers, 11th Report of Session 2008–09, HL Paper 92, p274
In addition to this we are currently rolling out a Keeping Children Safe learning and development programme across BIA. This will help to put the welfare of children at the heart of operational policy.

As you will be aware one of the reasons that the removal of unaccompanied asylum seeking children (UASC) was not included in this Review is that we are looking at the whole process of the treatment of UASC and we intend to publish the results of the consultation process before the end of the year. I will ensure that copies of the final document are submitted to the Clerk of the Sub-Committee as you request. We still need to explore the precise nature of the reception and care arrangements that are needed for this group, but I anticipate that the sort of arrangements highlighted in paragraph 32 of our response to the House of Lords European Committee Report on Illegal Migrants, would still be necessary. We will ensure that you are kept informed as we develop policy in this very important area.

6 November 2007

Letter from the Chairman to Liam Byrne MP

Thank you for your further letter of 6 November 2007 in reply to mine of 10 October. Sub-Committee F of the House of Lords Select Committee on the European Union considered your letter at a meeting on 28 November.

In my letter I expressly asked you to explain why the statement made by a Home Office Minister in 1993 was treated as a Ministerial commitment, while the statement you made in the Government’s response to our report was not. You have not answered that question; indeed you do not refer to it. I said then that we awaited your comments; we still do.

However we understand that reception and care arrangements for unaccompanied children in the proposed country of return are matters you are still exploring, and that they will be dealt with in the results of the consultation process which you intend to publish before the end of the year. You have offered to send a copy to the Clerk to the Sub-Committee. We will wait to see what that document has to say. If we believe that what you then propose falls short of the undertaking you gave in paragraph 31 of the Government response to the report, we will be returning to this issue.

29 November 2007

JUSTICE AND HOME AFFAIRS COUNCIL

Letter from Lord Hunt of Kings Heath, Parliamentary Under Secretary of State, Ministry of Justice, to the Chairman

I am writing to you about the JHA Council on 18 April since it is not possible for me to make my usual written statement to the House due to the timing of recess.

The Council will be held in Luxembourg and my honourable friend the Minister for State for the Home Office (Tony McNulty), my right honourable friend the Attorney General (Baroness Scotland of Asthal) and the Scottish Lord Advocate (Elish Angiolini) will represent the UK.

The Council will start with the Mixed Committee, also attended by Norway, Iceland, Switzerland and Lichtenstein. This will start with a report on the work of the Friends of the Presidency group on the revised timetable for migration of data to the second generation of the Schengen Information System (SIS II).

The proposal for a Directive on common standards and procedures in Member States for returning illegally staying third-country nationals will be taken in both the Mixed Committee and in the main Council. The draft Directive was issued by the Commission on 10 October 2005, and aims to establish common rules and procedures across Member States concerning the return of illegally staying third country nationals. After carefully considering the proposals, the UK decided not to opt-in. The proposal includes rules concerning removal, the use of coercive measures, pre-removal detention and appeal procedures as well as re-entry to the EU of removed third country nationals. Member States take the view that excessive attention paid to migrants’ rights will impede removals, and it is not likely they will modify their view, or agree to a compromise that does not address these concerns.

Turning to the main Council agenda, a number of items are set for a general approach at this Council including the Directive amending Directive 2003/109/EC to extend its scope to beneficiaries of international protection. The UK chose not to opt in to the original Directive as its provisions were not in line with our frontiers protocol and we wanted to determine the status of third country nationals via the Immigration Rules. The original Directive excluded refugees and beneficiaries of subsidiary protection from its provisions. The Commission

The Lords Sub-Committee has concerns on one point, which we will bear in mind in the negotiations.

The Presidency also wishes to reach a general approach on the Framework Decision on the enforcement of sentences. The UK is generally content with the text and intends to support the Presidency in their absence in the negotiations.

The Presidency wish to reach a general approach on the Implementing Agreement and Technical Annex to the Prüm Council Decision. The Government is content with the text. The German-Austrian Prüm data exchange experience has demonstrated clear benefits in preventing, detecting or investigation serious crime through a hit or no hit basis. This allows for data to be exchanged in fast (on average DNA hits are returned within 50 seconds up to a maximum of 24 hours), efficient and secure data exchange methods that have appropriately data protection standards.

The Framework Decision on Combating Terrorism will also be submitted for a general approach subject to the resolution of a number of outstanding issues, in particular concerning Member States’ jurisdiction over offences. On this point, the UK, with a number of other Member States, is seeking the maximum possible alignment between the Council of Europe Convention and Framework Decision. We understand that, provided this point can be resolved satisfactorily, the Committee is content for the Government to participate in the general approach.

The Council is expected to adopt draft Council Conclusions on practical cooperation in the field of asylum. The UK supports the current draft conclusions but thinks that it is desirable to have direct reference to the General Directors Immigration Services Conference (GDISC) included due to the important work they are currently undertaking and delivering on practical cooperation. This network takes forward initiatives in the area of practical and operational cooperation at an international level. We foresee GDISC as playing a key role in taking forward practical cooperation in the coming years.

There will be a recommendation from the Commission to the Council to authorise the Commission to open negotiations for the conclusion of a short-stay visa waiver agreement between the European Community and Brazil. The United Kingdom does not participate in Regulation (EC) 539/2001 (EU Common Visa List), subsequently amended by Regulation 1932/2006. The visa reciprocity mechanism and the three Commission Reports on visa reciprocity do not apply to the UK, and therefore we are not bound by the terms of the proposed EU-Brazil visa waiver agreement. The United Kingdom will continue to support the principle of reciprocity and extending visa free access to specified third countries for EU Member States.

There will be a discussion on the US Visa Waiver mandate, with the Commission aiming for Member States to reach agreement on the mandate, or to explain why not. The United Kingdom does not participate in this aspect of Schengen, and consequently the UK is not directly involved in EU common visa policy. We would encourage and offer support for the agreed EU positions on clearly defined EU competences. We can agree that it is in the general interest to reach a common accord on US requirements.

The EU Action Plan for enhancing the security of explosives will be presented for political agreement. The UK has been an active participant in developing this Action Plan and the Government agrees the proposals. The details of the Plan cleared parliamentary scrutiny in January 2008.

Articles 2, 7, 9, 10 and 30 of the proposed Council Decision to amend Eurojust’s current legal base will be discussed with a view to resolving the outstanding issues of substance on these provisions. Articles 2, 10 and 30 concern the composition of Eurojust, voting procedure in the Eurojust College and staff rules and regulations respectively, and we are content with the text of each of these provisions. Article 7 addresses the role of Eurojust in mediating conflicts of jurisdiction and the Government is currently assessing whether we are content with automatic referrals to the College. Article 9 concerns the access to databases given to National Members, and the Government is satisfied that there is a general consensus that we cannot give Eurojust National Members access above and beyond what is available to a domestic prosecutor, police officer or judge.

The Presidency also wishes to reach a general approach on the Framework Decision on the enforcement of in absentia judgements. The UK is generally content with the text and intends to support the Presidency in their objective. We are pleased to note that the European Scrutiny Committee has cleared the text from scrutiny. The Lords Sub-Committee has concerns on one point, which we will bear in mind in the negotiations.
Justice Ministers will discuss the proposal for a Common Frame of Reference (CFR) for European contract law with a view to agreeing a draft Council position in relation to this work. The Government is likely to be able to endorse the proposed position which sets out the Council’s view on the purpose, content, scope and legal effect of a future CFR. The Council view on these aspects can be summarised as follows: that the CFR should be a tool for better lawmaking targeted at Community lawmakers; that it should contain a set of definitions, general principles and model rules; that it should cover general contract law, including consumer law; and that it should be non-binding, so that Community law makers may agree to use it on a voluntary basis. The proposal has cleared parliamentary scrutiny.

There will be an information point on the outcome of the EU-US Ministerial Troika Meeting on Justice and Home Affairs, held on 12 to 13 March in Slovenia. Discussions were positive and focused on border and immigration policy, including the visa waiver programme, data protection and information exchange and counter terrorism.

There may also be a justice working lunch, but this is not yet confirmed.

14 April 2008

PASSenger NAME RECORD (PNR) FRAMEWORK DECISION

Letter from Meg Hillier MP, Parliamentary Under Secretary of State, Home Office, to the Chairman

I welcome the Committee’s interest in the proposed EU PNR Framework Decision and its decision to hold a short inquiry, focusing on the key issue of the scope of the proposal. I am pleased to provide the details below, building on the information provided in the Explanatory Memorandum of 7 December, and in advance of my oral evidence session on 19 March. I understand the Committee has expressed a particular interest in matters relating to the collection of PNR data on intra-EU flights and from rail and maritime carriers; the range of PNR data elements included in the scope of the proposal; the UK authorities entitled to receive PNR data; the transfer of PNR data to third countries; and the ability to collect PNR data more than twenty-four hours in advance of a flight. I have addressed each of these issues in turn below.

As you know, the draft proposal applies to flights between Member States and third countries and would appear to restrict the processing of PNR data to the fight against terrorism and organised crime. As you will be aware from the EM, the Government wishes to use PNR data to combat a range of illicit activities; to obtain PNR data from intra-EU flights; and to collect passenger data from maritime and rail carriers, as well as from airlines. This is because persons of interest do not, of course, restrict their travel to international flights and we believe that a comprehensive approach to border management will deliver the greatest benefits to UK citizens and to those people who travel legitimately to, from or through the UK.

Our approach to handling the geographic and transport aspects of scope differs from the way in which we are negotiating over the purpose limitation. The better approach with regard to the geographic scope and the modes of transport would seem to be to accept the restrictions imposed by the instrument, providing explicit provision is included in the text to allow Member States to legislate domestically to process passenger data on journeys by sea and rail and to process PNR and passenger data in respect of intra-EU journeys should they so wish. It would seem sensible and practical to allow Member States to address their particular needs without compelling others to take exactly the same action. For example, we accept that the ability to process data from maritime passengers is irrelevant to land-locked Member States, but may be of great interest to other Member States with busy ports. The e-Borders legislation which came into force earlier this month provides the relevant UK authorities with the powers to capture passenger data from all carriers entering and leaving the UK on all routes.

By contrast, an attempt to rely on domestic legislation to broaden the purposes for which PNR data may be processed, beyond those set out in the EU legislation, could be perceived as undermining the terms of the EU legislation by weakening the data protection safeguards that the instrument aims to put in place. This may give rise to questions over the principle of loyal cooperation. Furthermore, there may also be issues of exclusive EU competence to consider with regard to extending the permitted purposes through domestic legislation. We therefore believe that this issue should be addressed in the text itself.

Annex A to the Commission’s draft proposal sets out the nineteen data elements within the scope of the draft Framework Decision. Subject to further clarification from the Commission, the Government does not wish to add any additional data fields but would wish to obtain the same data in respect of crew members. We will

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1. PNR data is a term specific to the airline industry. Personal data collected by maritime and rail carriers are referred to here simply as “passenger data”.

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inform you if this position changes. However, item twelve in the list at Annex A notes that the General Remarks should exclude sensitive personal data; by contrast, we would wish that officials in the UK’s Passenger Information Unit (PIU) with appropriate training and security clearance might manually access sensitive personal data on a case-by-case basis, in line with specific data protection safeguards. Our experience has shown that sensitive personal data can be extremely helpful in eliminating individuals from further interventions because it can sometimes quickly explain unusual features of PNR which may initially appear to be suspicious.

Relevant data protection safeguards could include a prohibition on automated profiling on the basis of sensitive personal data and restricting access to appropriate officials only after a passenger has been flagged as potentially of higher risk. We simply do not profile on the basis of passengers who have chosen, say, a halal or kosher meal, and it is not technically possible to profile on the basis of sensitive personal data in the free text fields. The General Remarks field can sometimes include health data, for example if a passenger is a wheelchair user or has restricted mobility and requires assistance. Other Member States have expressed support for our position on the limited use of sensitive personal data and the Commission has noted that if such data were to be processed under the instrument, the UK’s suggested safeguards would seem to be appropriate.

However, the UK believes that the issue of access to sensitive personal data is currently confused in the draft text and it is not yet clear to us what the reference in the Annex to the exclusion of such data would mean in practice. For example, Articles 3(2) and 6(3) require the immediate deletion of sensitive personal data but Articles 3(3) and 11(3) note that no enforcement action may be taken solely on the basis of sensitive personal data, suggesting that such data may in fact be processed. We are keen to obtain clarity on this important matter and look forward to discussing the relevant articles as negotiations progress.

The authorities entitled to receive PNR data from the PIU will be dependent upon the purposes those data may be used for. As you know, the Government considers the current purpose limitation too narrow and we would wish to see this broadened beyond the combating of terrorism and organised crime. The Government believes that authorities with responsibility for tackling a broader range of activities which are damaging to the security and integrity of the UK’s borders should also be entitled to receive and process PNR data. Recent e-borders legislation provides that this data may be used by the UK Border Agencies where it is likely to be of use for immigration, police or Revenue and Customs purposes. We would not want this to be restricted by the Framework Decision.

The Government is concerned that the restrictions in the current draft proposal regarding who may obtain “raw” or unprocessed PNR data are unhelpful and unclear. The police forces in England and Wales are, of course, regional with their own intelligence commands based around the country; our Customs service also operates from regional bases. Our police and Customs officers often need to process raw PNR data in their own intelligence hubs in order to enrich that data with existing intelligence to progress criminal investigations as quickly as possible. We have raised this issue during negotiations and the Commission, Presidency and other Member States have been sympathetic to the need to overcome what is essentially an administrative matter. We have made very clear that the appropriate data protection safeguards must still apply wherever the data processing takes place.

The UK supports the Commission’s proposal to share data with third countries in line with appropriate data protection safeguards. However, the UK recognises that PNR data may be helpful in combating illicit activities beyond terrorist-related and organised crime. We would not wish to be prohibited from negotiating bilateral agreements with third country partners to use PNR data more broadly where such data sharing was in our mutual interests.

Article 5(3)(a) of the draft proposal imposes an obligation on carriers to provide PNR data to Member States’ Passenger Information Units twenty-four hours before a flight’s scheduled departure time, and again immediately after flight closure. However, the final paragraph of Article 5(3) allows Member States to exercise discretion in requesting PNR data earlier than twenty-four hours in advance of the scheduled departure time under certain circumstances. The UK would like to increase this flexibility in order that we are able to receive PNR data within a 24 – 48 hour window to reflect our current operational practice.

I hope this information is helpful to the Committee and I look forward to providing further evidence on this important matter on 19 March.

18 March 2008
Letter from Vernon Coaker MP, Parliamentary Under Secretary of State, Home Office, to the Chairman

Thank you for your letter of 10 October 2007. I hope in this letter to address the issues you raise in your most recent letter and provide you with feedback from the Information Commissioner in response to your initial request to Paul Goggins of 1 March 2006, and your subsequent letter to me of 26 July 2007, that the views of the Information Commissioner be sought on the extent to which this dossier might impinge on privacy rights. I am sorry that it has taken so long for you to receive a reply to your original request.

We have now received a response from the Information Commissioner’s Office. Their view is that this matter relates to whether the safeguards detailed in Article 7 of the draft Council Decision are sufficiently robust to deal with the proposed changes to Article 40 of the Schengen Convention which would allow for the surveillance of non-suspects.

Article 7 provides for any exchange of information under the draft Council Decision to be subject to the provisions laid down in Title VI of the Schengen Convention, which cover the transfer of information within the framework of the Schengen Information System. Those provisions would only apply to this draft Council Decision if personal data resulting from an Article 40 surveillance of a non-suspect was transmitted via the Schengen Information System.

It is the Assistant Information Commissioner’s understanding that information collected by a police force as a result of an Article 40 surveillance operation would fall under national data protection law. In the UK this would be the Data Protection Act 1998. So far as non-suspect information is concerned, it is his view that certain safeguards would need to be in place, such as the information being clearly identified as being about a non-suspect and restrictions being placed on its retention and disclosure.

As I explained in my letter of 12 September, negotiations on this dossier have been suspended. If they are resumed, we will ensure that the concerns around the retention of information on non-suspects are addressed.

In your recent letter of 10 October, you ask to be informed about the difficulties encountered by Member States in reaching agreement on this dossier.

These difficulties encountered by Member States were not as a result of any other initiative. In fact, there was broad agreement on a large portion of this dossier, largely because the options and non-binding provisions it contained allowed Member States to adapt police co-operation measures to suit local circumstances. Notwithstanding this flexibility, there were a number of substantial outstanding reservations, including on the draft revised wording for Article 40 of the Schengen Convention and the issue of dual criminality; despite the UK’s proposed compromise text which would allow dual criminality for those countries which required it, but not force it on those that did not.

An evaluation of this dossier conducted by the Finnish Presidency concluded that because unanimity was required to adopt this Council Decision, the failure to lift Member State reservations, combined with the inserted non-binding provisions, effectively meant, in their view, that the text was weakened to such an extent as to make it of little value. In the circumstances it was agreed that negotiations should be suspended.

In closing, I would like to mention that my ministerial responsibilities cover crime reduction, which was why I responded to your initial letter of 26 July 2007 concerning this dossier, because it also touched on the Commission Communication on organised crime (9997/05). However, any further correspondence on police cooperation matters should be dealt with by Tony McNulty, the minister with responsibility for crime and policing.

7 November 2007

Letter from the Chairman to Vernon Coaker MP

The Committee cleared this proposal on 10 October 2007. Thank you for your further letter of 7 November 2007 which Sub-Committee F of the House of Lords Select Committee on the European Union considered at a meeting on 28 November 2007.

We are grateful for your prompt reply, and for your explanation of the views of the Assistant Information Commissioner on the privacy issues, and of the reasons the negotiations foundered.

You explain that Tony McNulty MP is now the minister responsible for crime and policing. No doubt we will hear from him if, unexpectedly, negotiations on this proposal are resumed.

29 November 2007

Correspondence with Ministers, 11th Report of Session 2008–09, HL Paper 92, p279
PRÜM TREATY: INCORPORATION INTO EU LAW (6566/07, 11045/07, 11045/1/07)

Letter from Meg Hillier MP, Parliamentary Under Secretary of State, Home Office, to the Chairman

Thank you for your letter dated 26 July 2007 \(^{10}\) in response to the Explanatory Memorandum on the above dossier, I write to answer your questions, provide some further information and make you aware of the Government’s intention to participate in a general approach on this dossier at the Council.

IMPLEMENTING AGREEMENT

You ask why the Government is prepared to accept that the Implementing Council Decision not be accompanied by an Explanatory Memoranda, an impact assessment, nor a cost estimate, arguing that there is a distinction between handling of this measure and the approach taken on the original Council Decision, where the Government argued that such documents were not needed given the information provided on the practical experience of operating the arrangements in some States.

Whilst the Government continues to believe that EU initiatives, whether submitted by the Commission or by Member States, should respect better regulation principles, including the use of Explanatory Memoranda to explain the need and reasoning for the proposal, the Government does not believe there is a distinction to be made between the original Council Decision and this Implementing measure in this case. These are not two separate initiatives giving rise to different arrangements but rather they form parts of the same system and therefore the practical information provided in relation to the original Council Decision remains relevant here.

BENEFITS OF THE PRÜM DECISION

Your letter says that until you know better what benefits might be secured from the Prüm arrangements it is hard to tell whether the initial cost estimates are justified. As a first point I should explain that in order to implement the Prüm data sharing arrangements, the Government is planning to commission a detailed scoping exercise which will look at the impact of the Prüm Council Decision nationally and assess how best we take forward the initiative in the UK. In advance of that exercise, I can only reiterate what we consider to be the benefits of the data sharing arrangements in the Prüm Council Decision.

As I am sure you are aware information is a vital tool for the investigation, prevention and detection crime. Improving and increasing the sharing of information, as long as it is accompanied by appropriate safeguards, has been demonstrated to bring benefits to public protection. With increasing overseas travel by offenders and the trans-national nature of organised crime, the necessity to increase the number of the types of forensic intelligence increases accordingly. The current system of sharing DNA which can be slow and cumbersome has had some notable successes. For example, the case of a DNA profile from a crime scene (rape) which was sent to the UK from an EU Member State. A search on the UK database found a male unknown to the investigation who had previously been arrested in the UK for obstruction and possession of a forged instrument. He was traced and arrested for the offence of rape; removed to the Member State where he had offended and subsequently convicted and sentenced to 11 years imprisonment. This therefore lead to a criminal being brought to justice and being removed from the UK.

The Prüm Council Decision is the type of measure which will potentially produce this sort of result. As you know the Austrian-German model has led to 1500 hits on crimes; including serious crimes. We could expect to achieve similar benefits in the UK.

TECHNICAL ANNEX AND FACTUAL MANUAL TO THE IMPLEMENTING AGREEMENT

You ask why it is not possible to wait until all the provisions needed to implement the Prüm arrangements could be included in the Implementing Council Decision itself. I would like to take this opportunity to inform you that the Presidency has changed its intentions as to how they want to take forward the various implementing documents following the Explanatory Memorandum on the 16 July.

The Presidency has indicated that the technical annex will now form part of the current Implementing Council Decision. There will also be a separate manual but this will be a purely factual document maintained by the General Secretariat of the Council on the basis of information provided by Member States in relation to e.g. their competent authorities for the purposes of implementing the Prüm arrangements.

Although the Implementing Council Decision is subject to consultation with the European Parliament, we understand that the accompanying technical Annex will not be subject to such oversight. The Government has considered this approach and believes that it is appropriate. The Implementing Council Decision sets out parameters for the implementation from which we should not move, such as the importance of protection of

\(^{10}\) Correspondence with Ministers, 11th Report of Session of 2008–09, HL Paper 92, p280
the security and integrity of data. Its technical Annex however may need to be rapidly updated as technology evolves and implementation projects develop in Member States. Given the Annex is expected to set out detail such as the specific programmes to be used and some of the coding for these it would not seem prudent for a decision to make a minor technical change to be delayed by three months whilst the Council awaits the view of the European Parliament.

You reference in your letter the precedent of the Schengen Executive Committee, which I agree played a useful role in the original Schengen Convention. However when Schengen came into the EU the role of the Executive Committee was overtaken by Council as per Article 2 of the Schengen Aquis which reads, “The Council will substitute itself for the said Executive Committee.” The Government considers the Council and Commission reasonable bodies to undertake evaluation and to ensure that technical documents are suitable for their purpose.

You also express concern that the technical Annex (referred to as the Manual in your letter) will not be subject to formal scrutiny in the UK. Although we have yet to receive a draft of the technical Annex, since it will form part of the implementing Council Decision we believe that it is likely to be depositable within the terms of the Scrutiny Reserve Resolution. The Committee will therefore have the opportunity to comment on its terms whilst it is negotiated in an expert group in the Council. We understand that the Presidency hopes to launch that work next month.

In relation to the JHA Council later this week (8–9 November), UK has maintained its Parliamentary Scrutiny Reserve on the text of the Council Decision (as it stands without the technical Annex) but we have indicated to the Presidency that we can accept a general approach whilst we also await the views of the European Parliament on the proposal. The text was only sent to the European Parliament in October and they are not expected to provide their opinion, including any proposed amendments to the document, before the new year. Consideration of that opinion in the Council should offer an opportunity as necessary to pursue any outstanding issues from parliamentary scrutiny procedures in the UK, including the debate on the original Council Decision which we hope can be arranged before the end of the year. As I have implied above, final agreement and adoption of the Implementing Council Decision will also need to await work on the technical Annex.

6 November 2007

Letter from the Chairman to Meg Hillier MP

Thank you for your full and helpful reply of 6 November to my letter of 26 July. Sub-Committee F of the Select Committee on the European Union considered your letter at a meeting on 28 November 2007.

We would be grateful for clarification of the status of the technical annex. You refer to “the technical annex (referred to as the Manual in your [i.e. my] letter)”. I gave it that name because Article 18 provides that “Further rules concerning technical and administrative implementation of Decision 2007/…/JHA shall be laid down in a manual.” Now, if we have rightly understood your letter, there are to be two documents: a technical annex which will form part of the Implementing Decision, and a “separate manual [which] will be a purely factual document.”

If the technical annex is indeed to form part of the Decision, it will be subject to the ordinary legislative procedure for Decisions, and we do not understand why you say it would not be subject to consultation with the European Parliament, nor why there should be any doubt that it is depositable under the Scrutiny Reserve Resolution. Perhaps you could explain this.

We remain concerned about the procedure adopted when this proposal was put forward. This is certainly the continuation of the incorporation of the Prüm Treaty, but we do not believe this is a reason why the inadequate preparatory documentation for the main Decision should continue in the case of this Implementing Decision. However this, and our other concerns, can as you say be debated together with our concerns about the Prüm Decision itself. Lord Wright of Richmond, who was Chairman of Sub-Committee F at the relevant time, has tabled a motion for the debate of this Report, which is to take place on Thursday 6 December 2007.

We regret that your letter in reply to mine of 26 July could not have reached us in time to be considered, and our views made known to you, before the JHA Council on 8–9 November. As it is, a general approach to the Decision has now been agreed. You say that the UK has maintained its Parliamentary Scrutiny Reserve but, as you know, this is not how we see it. On this point both this Committee and the Commons European Scrutiny Committee differ from you. In our view the agreement of a general approach to a document still under scrutiny constitutes a scrutiny override. We draw to your attention chapter 2 of the Annual Report of this Committee for 2007, published on 1 November (35th report of the session 2006–07, HL Paper 180), and in particular paragraph 127 in which we encourage the Government to review its position on general approaches.

We intend to keep this document under scrutiny.

29 November 2007
Letter from Meg Hillier MP to the Chairman

Thank you for your letter dated 29 November in response to my letter of 6 November. You asked about the current status of the Prüm Technical Annex and for clarity on the procedures to be followed in relation to it. Please accept my apologies for the late reply.

Negotiations on the Technical Annex have commenced and are ongoing. As previously stated in my letter of 6 November, essential technical input from Member States experts is required in each of the technical categories (DNA, fingerprint and vehicle registration).

As you will recall I also wrote to notify you that the Portuguese Presidency had changed their intentions in how the Technical Annex would form part of the Prüm Implementing Agreement. With this change came a change in the procedures to be followed. The Technical Annex is, as you point out, depositable under the Scrutiny Reserve Resolution. It is also subject to consultation with the European Parliament, who will be providing their views on the Implementing Agreement and The Technical Annex during their plenary session on 9–10 April.

Any subsequent changes to the Technical Annex will not be subject to consultation with the European Parliament. This is to allow changes from evolving technologies and the developments in Member States, implementation projects to be incorporated without being delayed by three months while the Council awaits the view of the European Parliament. This has been laid out in Article 18(1) of the Implementing Agreement.

As you are already aware, the Prüm/PNR debate was held on 6 December on the floor of the House of Lords where a number of questions were raised in relation to the procedures adopted when this proposal was put forward. My noble friend, Lord West of Spithead, will be writing shortly addressing any outstanding questions.

30 January 2008

Letter from the Chairman to Meg Hillier MP

Sub-Committee F of the European Union Select Committee considered document 11045/1/07 Rev 1 Add 1 (the Technical Annex to the Prüm Implementing Decision) at a meeting today, and decided to clear the document from scrutiny.

The Sub-Committee were however concerned with paragraph 5.3.3 of Chapter 1 of the document, part of a passage on Security Standards and Data Protection. The last sentence (which seems to apply to paragraphs 5.3.1 and 5.3.2 as well) states: “By deployment of this three level security architecture the danger of the whole system being compromised to [sic] malicious attacks will be greatly mitigated”. They did not think that “greatly mitigated” sounded very reassuring, and would welcome any further information you can give about the protection which will be given to this highly sensitive personal data in the course of transmission.

The Sub-Committee also considered your letter to me of 30 January 2008 about the Implementing Decision itself, for which I am grateful. Your letter, and indeed the Explanatory Memorandum for the Technical Annex, now make clear the status of this document; we are glad that, despite its technicality, it has been given a formal status as part of a Council Decision.

We assume that, once all the technical details have been finalised, all the documents dealing with the implementation in EU law of most of the provisions of the Prüm Treaty will be formally adopted. We would be glad to know in due course when this might be, when amendments to UK primary legislation will be made, and when the Prüm legislation will come into force.

We look forward to hearing from Lord West of Spithead about the issues outstanding after the debate on 6 December, both on the Prüm Treaty and Decision and on the EU/US PNR Agreement, which was debated at the same time.

20 February 2008
Letter from Meg Hillier MP to the Chairman

I am writing to update you on the latest position regarding the negotiations on the Prüm Technical Annex, of the Presidency’s intention to seek agreement to the Annex at the April JHA Council and to answer the question raised in your letter of 20 February.

As you will be aware negotiations on the Technical Annex have been active in recent weeks and the text was last discussed at a Presidency chaired Council meeting of 5 February. During this negotiation we were able to lift our reserves on technical issues within the four chapters having negotiated the following textual and substantive changes needed to address the UK concerns that were set out in my Explanatory Memorandum of the 28 January:

Chapter 1

There were three main issues in relation to chapter one that we secured changes to. All three issues are very technical:

— Firstly, the number of loci. Loci are the identifiers within DNA strands used for matching DNA. A DNA profile may contain 24 pairs of numbers representing the alleles of 24 loci which are also used in the DNA-procedures of Interpol. The European Standard Set and the Interpol Standard Set both recommend the use of 6/7 key loci. The Technical Annex sought to use 5/7 plus a wildcard. This in effect gives you more hits than if you used 6/7 loci. The use of 6/7 loci would also lead to fewer resources needed to verify a true match and not a false positive match i.e. an initial hit but when checked by DNA experts reveals that there is no match. Some Member States were very resistant to increasing this number but we secured the text so that all DNA-profiles sent out for searching and comparison must contain at least 6 full designated loci (i.e. no wild card values) and may contain additional loci or blanks depending on their availability.

— The second amendment related to security standards and data protection. We secured the need to use an accredited infrastructure and system (as per EU Council Security Regulations and EU Council Decisions) in order to share DNA data rather than an unaccredited infrastructure to ensure that when we share data it is protected with the appropriate safeguards when transmitted to the requesting Member State.

— Finally, the Presidency explicitly recognised and endorsed that the Technical Annex is a living document which should be adapted to reflect new technology.

Chapter 3

The key concern that we were able to resolve in relation to this chapter was the need to utilise, an accredited infrastructure and system (as per EU Council Security Regulations and EU Council Decisions) in order to share vehicle registration data, rather than an unaccredited infrastructure. This would therefore ensure that when we share data it is protected with the appropriate safeguards.

Chapter 4

There were a number of changes we secured in this chapter as follows:

— In relation to section 1.1, the questionnaire is to be compiled in a relevant Council Working Group thereby ensuring that Member States can incorporate for example, the changing nature of the technologies used to share Prüm data.

— In relation to section 1.2, a relevant Council Working Group will now consider the condition and arrangements for the pilot run.

— In relation to section 2.1, a relevant Council Working Group will now consider the statistics and reports following the evaluation procedure according to Article 21 of the Implementing Agreement.

— Finally, many Member States wanted to make amendments to section 2.3 regarding the model for statistics. A number of Member States felt the table did not contain the necessary categories of serious crime to collate useful statistics. This will also be considered by a relevant Council Working Group.

We were the only Member State to maintain our parliamentary scrutiny reserve. All other Member States indicated that they could now agree the text as proposed.

From my previous correspondence you will be aware that the European Parliament is due to offer its opinion on the Prüm Implementing Agreement and the Technical Annex during its plenary session on 9-10 April. In answer to the question raised in your letter of 20 February regarding formal adoption of Prüm, we anticipate that the whole package of Prüm (the Council Decision agreed last year, along with the Implementing
Agreement and Technical Annex) is likely to be adopted at the Justice and Home Affairs Council on 17–18 April.

You also asked about the key issue of security standards and data protection in relation to chapter one (DNA). The changes we secured as stated above provide the UK with appropriate security standards for transmitting this personal data.

Once Prüm is adopted we will focus our attention on implementation in the UK, including the feasibility study to establish an appropriate implementation model and final costs. The Council Secretariat will also begin to prepare the Manual which will contain factual information on arrangements in each Member State e.g. the responsible central authorities.

On primary legislation, I can report that we are currently in the process of establishing what, if any, legislation will be required to implement Prüm in the UK.

25 March 2008

READMISSION AGREEMENTS (12634/07)

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

Sub-Committee F of the Select Committee on the European Union considered these proposals at a meeting on 28 November 2007, and decided to clear the document from scrutiny.

You will recall from my letter to you of 27 June 2007 about the parallel agreement with Ukraine, to which you replied on 11 July, that this Committee very much regrets the tactic adopted by the Government of voting against agreements which it supports, and which it knows that we also support for all the reasons given in my earlier letter. I appreciate however that the Commons European Scrutiny Committee prefer you to abide by the letter of the scrutiny reserve, that you cannot satisfy both Committees, and that this is what you have chosen to do.

I am grateful for your letter of 9 October regarding the readmission agreements with the West Baltic States which were signed in September. However I regard it as wholly unreal for you to say that voting against the Decisions “made it clear to the Council that our domestic Parliament plays a crucial role in formulating the UK’s position … ” The UK’s position was finalised when the Government decided to opt in to these agreements. The only role played by Parliament is that both Committees have made it clear in the past that they support such agreements by clearing the earlier parallel agreements from scrutiny when they first considered them.

29 November 2007

Letter from Meg Hillier MP, Parliamentary Under Secretary of State, Home Office, to the Chairman

I am writing with reference to the above agreements.

The House of Lords’ Committee has recently expressed concerns regarding the scrutiny process of the EC Readmission Agreements with the Ukraine, West Balkans (Bosnia and Herzegovina, Former Yugoslav Republic of Macedonia (FYROM), Montenegro and Serbia) and Moldova. I have also been informed that negotiations on the Pakistan EC Readmission Agreement are now at an advanced stage, and it is possible, given the tight time limit that we have for deciding whether to opt-in, that this problem may again arise. I share these concerns, and fully accept that this situation, while unavoidable, is regrettable.

As you are aware at present, your committee only receive these agreements’ Explanatory Memoranda (EM), once clearance has been granted by the National Security, International Relations and Development Sub-Committee on Europe (NSID(EU)). While these documents remain classified, due to ongoing negotiations, you would not usually be consulted prior to a final proposal for a decision being circulated. My officials are given consideration to a method that could assist with scrutiny of these EC Readmission Agreements, but at present this is only at the initial stages, and they will have to consult as to whether any proposals will be permissible.

I would be happy to discuss further how we can both meet scrutiny requirements and allow for a decision.

8 April 2008

31 Correspondence with Ministers, 11th Report of Session 2008–09, HL Paper 92, p282
RECEPTION STANDARDS FOR ASYLUM SEEKERS (15802/07)

Letter from the Chairman to Meg Hillier MP, Parliamentary Under Secretary of State, Home Office

Sub-Committee F of the European Union Select Committee considered this report at a meeting on 9 January 2008. We noted your findings of inaccuracies and inconsistencies in the report with regard to the implementation of the Directive in the UK and your concern with the standard of the evaluation, which you intend to take up with the Commission. We consider this a matter of interest, and we would be grateful if you could copy to us the letter raising the Government’s concerns with the Commission, and any subsequent correspondence.

The document has been cleared from scrutiny.

10 January 2008

RESPONSES TO EU SELECT COMMITTEE REPORTS

Letter from the Chairman to the Rt Hon Jacqui Smith MP, Secretary of State, Home Office

I am writing to ask for your help in the work of this Committee in scrutinising draft EU legislation for which your department is responsible, and in carrying out inquiries into matters within your departmental responsibility.

In conducting this work the Select Committee, and in particular its Sub-Committee F which deals with home affairs, relies very much on the cooperation of your ministers and officials in replying to correspondence and responding to reports fully and without delay. Usually we receive that cooperation, and for this we are very grateful. Sometimes however we do not.

As you will know, Cabinet Office guidance, re-issued most recently on 22 June 2007, repeats the Government’s commitment to respond to reports “within two months if possible.” The Select Committee’s report After Heiligendamm: doors ajar at Stratford-upon-Avon (5th report, session 2006-07, HL Paper 32) was published on 21 February 2007. It is a short report, yet Ms Hillier’s response was dated 16 October, nearly eight months later. It was considered by Sub-Committee F at a meeting on 14 November. I have replied today to Ms Hillier, and I enclose a copy of that letter (not printed).12

Our report was critical of your predecessor’s failure to give oral evidence to the Sub-Committee, despite an express undertaking to do so—an undertaking repeated by Joan Ryan MP, then Parliamentary Under-Secretary of State. The response gives no explanation for this. Neither you nor Ms Hillier can be held responsible for that failure, but we still deserve an explanation for it. If the response had been sent within two months of the report’s publication, both Dr Reid and Ms Ryan would have been able to explain this themselves.

I think you should be aware of a much wider discontent with your Department’s attitude to the House of Lords which is partly centred on the record of the Home Office in replying to Written Questions long after the two week target period has expired. In this your Department’s record is worse than any other.

I have also written today to Ms Hillier about the delay in implementing in the United Kingdom the second generation Schengen Information System (SIS II). I attach a copy of that letter too.13 In March this year we published our report Schengen Information System II (SIS II) (9th report, session 2006–07, HL Paper 49). The start-up date for SIS II is December 2008, yet the UK will not be connected to the system until April 2010. SIS II will be an important law enforcement tool for the police and others, yet we will be one of the last countries to join.

During the course of our inquiry, subsequently in correspondence, and latterly in a debate on 12 October, we have been seeking the reason for this. Ms Hillier has told us that the need to link all UK law enforcement agencies to SIS II makes this a far more complicated programme for the UK than for some other Member States. We hope we can rely on your support in seeking an answer to this question: if other large Member States can be connected to SIS II as soon as it goes live, precisely what is it about the UK which requires a further 16 months before we can be connected?

16 November 2007

13 See Schengen Information System (SIS II): Communication Infrastructure.
HOME AFFAIRS (SUB-COMMITTEE F)

Letter from Jacqui Smith MP to the Chairman

Thank you for your letters of 16 November to Meg Hillier and myself on the above topics. I am pleased to hear that you are generally content with the cooperation the Select Committee and in particular Sub-Committee F receives from Home Office Ministers and officials. However, you raise questions about the Home Office’s responses to Select Committee reports, replies to Written Questions and your continued dissatisfaction with the timescales for implementation of the second generation Schengen Information System (SIS II). I have asked Meg Hillier to address your points about SIS II and she will be writing to you separately.

RESPONSES TO REPORTS

I apologise for the time it took for this department to respond to the Select Committee’s report After Heiligendamm: doors ajar at Stratford upon Avon, published in February. I am of course aware of the undertaking to respond to such reports within two months and have sought to ensure that we have met this deadline for subsequent reports from the Committee on Prüm and on SIS II.

I cannot give an explanation for my predecessor’s decision not to give oral evidence to the Committee beyond that which was set out in the letter from Meg Hillier dated 16 October. I understand that although he had given an undertaking, he subsequently considered that the evidence given by Joan Ryan on 28 June 2006 and his letter to you of 20 December 2006 provided sufficient detail.

As your letter to Meg Hillier of 16 November 2007 indicates, we have since changed our working practices with respect to the reporting of meetings of the G6 and have accepted the Committee’s recommendation that these should be the subject of Ministerial statements. That letter acknowledges that this was undertaken for the G6 meeting which I attended in Poland last month and you have my assurance that it will continue for future meetings.

On that subject, you may wish to be aware that on 30 November—1 December I attended a symposium in Berlin organised by my German counterpart. The symposium had been arranged to take forward one of the G6 workstreams on international legal frameworks relating to counter-terrorist action, but provided an opportunity for me to meet with the Interior Ministers from the G6 countries, as well as the US Secretary of State for Homeland Security, Michael Chertoff in advance of the next meeting of the G6 Ministers, which will be in Spain in the first half of next year. I will formally report this meeting to Parliament shortly.

WRITTEN QUESTIONS

In response to the point you have raised about my department’s performance on answering Written Questions in the House of Lords, I would like to assure you that Ministers give serious attention to this matter and make every effort to answer all questions within the targets set by the House. Unfortunately this is not always possible but the Home Office regularly reviews its performance and processes in respect of answering Parliamentary Questions. We make improvements where necessary and I am pleased to say that our latest internal performance management information, for the period 6 November to 27 November, shows that 97% of all Lords Written Questions were answered within the timescales set by the House.

12 December 2007

Letter from the Chairman to the Rt Hon Jacqui Smith MP

Thank you for your letter of 12 December 2007 in reply to mine of 16 November. Sub-Committee F of the Select Committee on the European Union considered this at meetings on 9 and 16 January 2008. The Sub-Committee considered on 9 January the letter from Ms Hillier of 7 December, and I have replied to her separately.

RESPONSES TO SELECT COMMITTEE REPORTS

We are glad to have your apology for the delay in replying to the Committee’s report on the G6 meeting at Stratford-upon-Avon in October 2006. The responses to the reports on SIS II and on Prüm were received within the two month period, and for this we are grateful—as indeed I said at the time.

We remain disappointed that you cannot explain why your predecessor was unable to give evidence to us about the Stratford-upon-Avon meeting. As you know, Dr Reid was unwilling to comment on the meeting of the G6 in Heiligendamm in March 2006 because it had been attended by his predecessor, Charles Clarke. If the response to the report on the Stratford-upon-Avon meeting had been received in time, or even within four months, it would have been agreed by Dr Reid, who could have explained for himself why he had declined to give evidence to us.
We are grateful to you for having informed us of the further meeting of the G6 in Berlin on 30 November and 1 December 2007, of which we were previously unaware. This, like the meeting in Venice in May 2007, was attended by the US Secretary for Homeland Security. In your letter, dated 12 December, you wrote that you would “formally report on this meeting to Parliament shortly”. In fact we see that you had already made a written statement on 10 December, although you did not enclose a copy of it. We are glad to know that you share our view about the importance of publicising these meetings.

We note from your statement that Germany intends to convene further such meetings. We would be glad to be kept informed of them.

**Written Questions**

We are glad to have your assurance that Home Office Ministers are making every effort to answer questions within the targets set by the House—14 days. However we think that to choose to assess your Department’s performance over the first 14 sitting days of the new Session gives a misleading impression. We are sorry to see that today the Home Office heads the list of Departments with questions unanswered after 14 days. Two of the unanswered questions are from members of Sub-Committee F.

17 January 2008

**SCHENGEN INFORMATION SYSTEM (SIS II): COMMUNICATION INFRASTRUCTURE**

**Letter from the Chairman to Meg Hillier MP, Parliamentary Under Secretary of State, Home Office**

Thank you for your letter of 5 October 2007 which Sub-Committee F of the Select Committee on the European Union considered at a meeting on 4 November 2007.

While we are grateful for your explanation of the reasons for the delay in the UK connection to the SIS II system, we are still wholly unpersuaded that any delay is necessary, let alone a delay of 16 months.

Some members of the Sub-Committee, including Lord Wright of Richmond, the then Chairman, saw your letter before the Committee’s report on SIS II was debated in the House on 12 October. In opening the debate Lord Wright, after pointing out that the start-up date for SIS II was December 2008, referred to your letter which confirmed that the date of UK connection would be April 2010. He was critical of your statement that “This is a complex programme which we need to ensure we get right”, and asked: “...is it really more complex for the UK than for other large Member States? They too have to get it right. Why are these problems incapable of resolution within the next 14 months?”

These are views which the whole Committee shares. We would be glad to know what there is about the position of the UK, compared to other Member States, which makes the task so much more complex. In your Channel 4 interview in July you stated that some at least of the delay resulted from the UK having to connect 80 different users of the Police National Computer to SIS II. We find it hard to believe that this is more complex than arrangements for other large States.

Replying to the debate on behalf of the Government, Lord West of Spithead referred to the delay in joining up to SIS I which led to the decision not to join SIS I at all, and said: “I do not think we should be proud of what was done there.” On the timetable for SIS II, he said that he was not happy about not being able to move faster, but feared that “to do it in a rush would result in our making the same mistakes as we did before.”

We too are unhappy about not being able to move faster. SIS II will be a valuable law enforcement tool for the police and other authorities, as SIS I already is. The United Kingdom should be one of the first States to join, rather than one of the last. We have no wish to see the Home Office repeat in the case of SIS II the same mistakes that were made with SIS I. We do however believe that more resources should be made available so that the UK, even if it is not ready to join in December 2008, can be ready as soon as possible thereafter.

You state in your letter that you will accelerate the timetable if it is possible to do so without risk. We look forward to hearing what steps you intend to take.

16 November 2007

14 Correspondence with Ministers, 11th Report of Session 2008–09, HL Paper 92, p 285
15 Schengen Information System II (SIS II), 9th report, Session 2006–07, HL Paper 49
Letter from Meg Hillier MP to the Chairman

Thank you for your letters of 16 November on SIS II and the Government’s response to the Select Committee’s report on the G6 meeting held at Stratford-upon-Avon in October 2006. I am replying with regard to SIS II, whilst the Home Secretary will be responding on the wider points you raise on responses to Select Committee reports.

Speeding up the implementation of SIS II is not simply a question of resources; it would also curtail the timeframe for testing the solution with the Police National Computer (PNC). We cannot run the risk of disruption to the operational effectiveness of the systems to which SIS will connect. SIS II must be integrated into the existing IT infrastructure of each Member State, and for the UK this will be the PNC.

The PNC already integrates with a number of other systems, including the Violent & Sexual Offenders Register, the National Firearms Licensing Management System and the DNA database, and all these systems will need to be changed in line with the PNC to fully integrate SIS II.

Depending on the change to the PNC, there can be a cascading impact on the number of changes that need to be carried out on the surrounding systems. Sometimes one change to PNC may result in 10, 20 or 50 modifications to other systems, depending on the type of modification made and how that impacts on all other systems connected through the PNC which in turn require readjustment.

Some larger Member States have similar systems to those of the UK, although their systems are not as integrated as those in the UK and therefore not as challenging to implement into their equivalent of the PNC.

In addition to the technical IT solution, there is also a large business change process to be implemented for all relevant Law Enforcements Agencies and the 250,000 users that access PNC who will, in the future, liaise with SOCA-SIRENE (Serious Organised Crime Agency—Supplementary Information Request at the National Entry), Sirene being the central point of contact for cross-border surveillance forming part of the international division of SOCA.

The size and technical complexity of this programme of work, together with the necessary business change programme that will also need to take place, make it unrealistic to expect that this programme of work will be delivered in the next 14 months without accepting a number of very high risks (impact and probability) to its success, the consequence of which could be to curtail the use of PNC for Operational Officers or impact the use of the Central Schengen Information System) for other Member States.

7 December 2007

Letter from the Chairman to Meg Hillier MP

Thank you for your further letter of 7 December 2007 which Sub-Committee F of the Select Committee on the European Union considered on 9 January 2008 at its first meeting after the Christmas recess.

We are grateful for your further and fuller explanation of the reasons for the delay in the UK connection to the SIS II system, and we accept that it may, as you say, be less challenging for some of the other large Member States to connect their equivalents of the PNC to SIS II.

You say that it is “unrealistic to expect that this programme of work will be delivered within the next 14 months without accepting a number of very high risks...”. The figure you give of 14 months no doubt comes from the fact that SIS II is due to go live on 18 December 2008, which is 14 months after Lord Wright gave that figure in the debate. That date was of course only just over 12 months away when you wrote on 7 December 2007, and is now barely 11 months away.

However you have said that the UK’s connection to the system is planned only for April 2010, a further 14 months after SIS II goes live. In your earlier letter you stated that you would accelerate the timetable if it was possible to do so without risk. We would be glad to know if you have any plans for reducing this further delay, and whether you are making more resources available so that the UK, even if it is not ready to join in December 2008, can be ready as soon as possible thereafter.

10 January 2008

Letter from Meg Hillier MP to the Chairman

Thank you for your letter dated 10 January regarding the second generation Schengen Information System (SIS II), in which you ask about Home Office plans to bring forward the UK’s date of connection to SIS II (currently planned for April 2010), and whether more resources will be made available.

The programme is currently involved in further detailed planning of SIS II and will undergo an independent review of that planning to ascertain accuracy, reliability and risk to the proposed schedule of delivery.
Speeding up the implementation of SIS II is not simply a question of resources; it would also curtail the timeframe for testing the solution with the Police National Computer (PNC). As you are aware from my letter of 7 December, the changes, interdependencies and relationships of SIS II to the PNC are the areas of greatest risk to this project. As I wrote on 7 December:

“Depending on the change to PNC, there can be a cascading impact on the number of changes that need to be carried out on the surrounding systems. Sometimes one change to PNC may result in 10, 20 or 50 modification to other systems, depending on the type of modification made and how it impacts on all other systems connected through the PNC, which in turn require readjustment.”

The technical complexity and risks involved in carrying out this work are best managed by a methodical step by step approach carried out in a disciplined manner.

As work progresses the Programme Team will take every opportunity to reduce the planned delivery timeframe.

The planning process is an iterative one, to allow for opportunities to reduce time, cost or resources where appropriate (and where we are not increasing risk); this is a feature of good programme management practices.

24 January 2008

Letter from the Chairman to Meg Hillier MP

Sub-Committee F of the Select Committee on the European Union considered these two documents at a meeting on 6 February 2008 and cleared them from scrutiny.

The Committee also considered your letter to me of 24 January in reply to mine of 10 January in which I asked whether you had plans for bringing forward the date of the United Kingdom’s connection to SIS II. We appreciate, as we always have done, the complexity of connecting the PNC, and the need to avoid taking any risks. We are however glad to hear that the Programme Team will be taking every opportunity to reduce the planned delivery timeframe, and hope that you will let us know if this proves possible.

In our previous correspondence you have given 17 December 2008 as the date for the implementation of SIS II, and this is repeated in the EM for the two documents the Committee scrutinised. However we note that on 22 January, two days before you signed your letter, the Slovenian Minister of the Interior made a speech to the LIBE Committee of the European Parliament in which he referred to the technical problems of all States converting at once from SISone4all to SIS II, and said: “The Presidency believes that in order to provide additional system stability, the connection to SIS II could be postponed for some months. This will be discussed at the Informal Meeting of the EU Council on Justice and Home Affairs, which will be held in Slovenia later this week”. We have seen the Written Statement you made following that meeting. From this it appears that there is indeed some doubt about the date of rollout of Central SIS; we would be grateful for any further information you can supply. While any delay would be regrettable, we assume that it would lessen the additional 14 month delay before the UK is connected.

19 February 2008

Letter from Meg Hillier MP to the Chairman

I am writing in response to your letter dated 19 February regarding proposals for a Council Decision and Council Regulation on the tests of the second generation Schengen Information System (SIS II). In this letter you refer to my letter of 24 January regarding the UK’s planned connection to the SIS II database, and ask about the date of rollout of Central SIS and the impact any delay may have on the UK’s connection date.

As you note in your letter, at the January Informal JHA Council the Slovenian Interior Minister, Dragutin Mate, suggested a revised date of September 2009 for the roll out of the Central SIS, a delay of nine months from the original date of 17 December 2008. Since then, at the February JHA Council, the Presidency confirmed that September 2009 was a feasible date to go live with SIS II. The Commission has been tasked with devising a revised timetable, and the UK will press the Commission to ensure it drafts a robust and evidence based timetable, working with and sharing all relevant information with Member States at Working Group level.

We are looking carefully at any impact the delay to the Central SIS programme may have on the UK connection date.

18 March 2008
SOCIAL SECURITY FOR MIGRANT WORKERS (12166/07)

Letter from the Chairman to James Plaskitt MP, Parliamentary Under Secretary of State, Department for Work and Pensions

Thank you for your letter of 30 October 2007 which Sub-Committee F of the House of Lords Select Committee on the European Union considered at a meeting on 28 November 2007.

We are grateful to you for clarifying the impact of this proposal on UK law and explaining the reasons why the Government has concluded that it should not opt in to the measure. The Committee has decided to clear the document from scrutiny, but we would be grateful if you could clarify the following additional points.

According to the Commission’s EM, this proposal aims to ensure that the same rules for coordinating social security schemes are applied to nationals of third countries as those which apply to European citizens. How does this square with your assessment that the Regulation would appear to give better treatment to third country nationals than to EEA nationals?

Secondly, we understand that under the EC Social Security Regulations Member States are free to determine the details of their own social security systems, including which benefits are to be provided, the conditions of eligibility and the value of these benefits, as long as they adhere to the basic principle of equality of treatment and non-discrimination. It is therefore, difficult to understand how the Regulation would constitute a challenge to the UK immigration policy and its “no access to public funds” rule.

29 November 2007

Letter from James Plaskitt MP to the Chairman

Thank you for your letter of 29 November. You have cleared this document from Scrutiny. However, you asked for clarification on two important points: the issue of better treatment for nationals of third countries than for European citizens; and how the public funds rule would be affected by this proposal.

The current Commission proposal was brought forward because the current EU social security coordination rules will be replaced by a new Regulation and the coverage for nationals of third countries is to be updated to reflect the new rules. This proposal is significant as it would extend the social security coordination rules to cover third country nationals moving between Member States, who have never worked.

As regards your first question, the better treatment for third country nationals arises due to the interaction between the proposed EU measure and our own domestic legislation in the United Kingdom. In order to be entitled to income-related benefits in the UK, a person must generally be habitually resident. On 1 May 2004 the habitual residence test was modified so that in order to be habitually resident, a claimant must also demonstrate a right to reside. The right to reside is also a condition of entitlement to child benefit and the child tax credit administered by HM Revenue & Customs. EEA nationals, who are not economically active and who are not self-sufficient, will not generally have a right to reside. They will not in these circumstances therefore have an entitlement to income-related benefits, child benefit or the child tax credit. The compatibility of this “right to reside” test with EU law was upheld by the English Court of Appeal in July 2007 ([Abdirahman and Ullasow v Leicester City Council and Secretary of State for Work and Pension] [2007] EWCA Civ 657. Decision of 5 July 2007).

Third country nationals are generally prevented from accessing income-related benefits, child benefit and tax credits as they are subject to immigration control and to the “no access to public funds” rule. This is where the interaction with the proposed EU measure arises: the extension of the EC Social Security Regulation to non-economically active third country nationals would knock out the “no access to public funds rule” and such persons would, on the basis of our current domestic legal regime, be entitled to income-related benefits, child benefit and the child tax credit. In contrast, non-economically active EEA nationals would generally not be eligible due to the application of the right to reside test in domestic law.

Your second question concerns how the EC Social Security Regulation affects the “no access to public funds” rule. The Regulation, as you state, contains a principle of equal treatment: this means that persons covered by the Regulation must receive the same benefits as home state nationals. It is this requirement of equal treatment that in effect “trumps” the “no access to public funds rule and allows third country nationals within the scope of the Regulation access to income-related benefits, child benefit and the child tax credit on the same basis as home state nationals.

6 March 2008

Letter from the Chairman to James Plaskitt MP

Thank you for your letter of 6 March 2008 which Sub-Committee F of the House of Lords Select Committee on the European Union considered at a meeting on 26 March 2008.

We are grateful to you for writing again to us to clarify the interaction between the proposed measure and domestic legislation in the UK.

27 March 2008

THIRD COUNTRY NATIONALS: INCREASING THE ATTRACTION OF THE EU (14491/07)

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

Sub-Committee F of the European Union Select Committee considered this proposal at a meeting on 20 February 2008.

The Committee noted that you undertake to provide fundamental rights analysis only if and when the Government decides to opt in to this proposal. In the event, you informed us on 5 February that the United Kingdom has decided not to participate in the adoption and application of this proposal.

As you may be aware, I have written to your colleague Meg Hillier MP on this matter, as she has taken the same approach in relation to a legislative measure from which the UK is excluded (document 14217/07). We reject the suggestion that a fundamental rights analysis should not be provided on a proposal which the UK does not participate in, or has not yet decided whether to opt into. We believe that Cabinet Office Guidance on the fundamental rights analysis in EMs is clear in this respect: the amended guidance and the covering letter with which it was circulated on 30 July 2007, both refer in terms to “every draft legislative proposal submitted for scrutiny” (my emphasis). There is no suggestion that a different rule should apply if the United Kingdom is not, or may not be, opting in.

The Committee will undertake a formal scrutiny of this proposal when a fundamental rights analysis is received. We would be particularly grateful if the analysis could address the extent to which the entitlements attached to the EU Blue Card are in step with international labour law standards as provided in ILO Convention 97 and the 1977 Council of Europe Convention on migrant workers. In the meantime, this document will be kept under scrutiny.

20 February 2008

Letter from Liam Byrne MP to the Chairman

Thank you for your letter of 20 February 2008. Your letter raises some complex cross departmental issues regarding the circumstances in which a Fundamental Rights Analysis is provided. This requires consultation across Government, which will take place in early March. I will provide you with a substantive reply as soon as the outcome is known.

6 March 2008

THIRD COUNTRY NATIONALS: SINGLE APPLICATION PROCEDURE (14490/07, 14491/07)

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

Sub-Committee F of the European Union Select Committee considered this proposal at a meeting on 20 February 2008.

The Committee welcomes this proposal as, during an inquiry on economic migration to the EU, it had taken the view that the EU should play a role in setting standards in relation to the rights of migrant workers (Economic migration to the EU, 14th Report of Session 2005-06, HL Paper 58). We consider the standards to be broadly adequate. We are not sure, however, why the Commission thought it necessary to exclude categories of people from the measure on the ground that they are covered by other Directives. As a measure setting fundamental rights standards in relation to employment we would have thought this should apply to all workers.

This approach seems to us even more questionable because workers in excluded categories will not always be covered by other instruments, and the provisions in other instruments are generally less detailed as regards equal treatment than in this proposal. There is therefore a case for giving these excluded categories the benefit of the more general instrument, while creating exceptions for particular entitlements, if these are thought necessary. We would be grateful for your views on this.
We would also like to know in what way and to what extent the equal treatment provisions may have implications for the UK’s decision to retain control over their border and its policy that persons subject to immigration control should not have access to public funds. Although, in your letter dated 5 February, you inform us that the United Kingdom has decided not to participate in the adoption and application of this proposal, we would still welcome a detailed analysis of the proposal’s impact.

Finally, could you let us know what the basis of your assertion is that no fundamental rights arise from this proposal?

The Committee has decided to keep the document under scrutiny pending receipt of the information requested.

20 February 2008

Letter from Liam Byrne MP to the Chairman

Thank you for your letter of 20 February 2008. Your letter raises some complex cross departmental issues regarding the circumstances in which a Fundamental Rights Analysis is provided. This requires consultation across Government, which will take place in early March. I will provide you with a substantive reply as soon as the outcome is known.

6 March 2008

UNIFORM FORMAT FOR RESIDENCE PERMITS FOR THIRD-COUNTRY NATIONALS (7298/06, 12658/07)

Thank you for your letter of 14 June 2007 raising some further questions in respect of the above Regulation. Please accept the Border and Immigration Agency’s apologies for not getting back to you sooner. You have asked for a more detailed breakdown of the costs and a clearer reconciliation of the variations in the estimates provided in 2003, 2006 and 2007. Please find attached a reconciliation of the variations in those costs.

You also asked me to provide an estimate of the number of applications we expect to receive each year for Biometric Residence Permits (BRPs). Our current volumes are based on our developing rollout strategy which aims to maximise opportunities for tackling abuse of the UK immigration system. BRPs are only a part of our wider plans for implementing Biometric Immigration Documents. You will be aware that the legislation required for this has now been passed and the UK Borders Act 2007 is in place. Section 5 of that Act enables the Secretary of State to make regulations requiring a person subject to immigration control to apply for the issue of document recording biometric information (a Biometric Immigration Document—of which the BRP will be one type). These secure documents will help us tackle illegal working and shut down access to the benefits of living in the UK for those who should not be here. As the number of people with biometric ID grows, it will be much harder for those here illegally to obtain jobs, gain access to benefits and enjoy the privileges of UK life.

Our roll out will build up gradually to cover all foreign nationals, in addition to those applying to extend their leave to stay for more than 6 months. We need to make sure the technology works well and that we get our own processes right. As with all estimates that predict future state, our cost estimates are likely to change in light of further experience.

You also mention that you did not receive a copy of the Identity Cards Scheme Costs Report which was published and laid before Parliament in May 2007. I am sorry we did not forward you a copy at the time—it is now readily available and I have enclosed a copy (not printed), together with the updated version of this report which was published today (not printed). The costs for the foreign national aspect have reduced very slightly since I last wrote to you. This reflects our increased understanding of the processes involved (set-up costs down from £21.7 million to £21.4 million and annual operating cost down from £25.5 million per year to £22.2 million per year). As with any cost estimates there are uncertainties. These estimates are therefore subject to change in the light of new information or assumptions. In particular I intend to consult on the roll out plan and this may affect our cost profile.

You question the general approach reached at the September Justice and Home Affairs (JHA) Council and indicate that you view this as marking the end of any possibility of negotiation on the text. As you know, the government view is that a general approach is not subject to the scrutiny reserve resolution and we have made it clear to the Council that we reserve the right to re-open negotiations once a general approach has been reached on any text, should we have outstanding concerns. The re-opening of a general approach has been
demonstrated on a number of occasions, most recently in the case of the Framework Decision on prisoner transfer.

The Portuguese Presidency has agreed not to propose this for adoption until the 6-7 December JHA Council. This important measure has now been debated by both Houses during the course of the UK Borders Act. I hope that you are now able to clear the latest document from scrutiny and I remain committed to personal and official engagement with the Committee in order to spell out any answers you would think important about the recent changes in cost estimates as the programme has taken shape.

8 November 2007

ANNEX

COST RECONCILIATION

The tables below contain a detailed breakdown of our cost estimates for the BRP project produced in 2003, 2006 and 2007. The overall costs have been broken down into staff required to run the operation, accommodation and IT needed and supply of equipment and services (this includes call centre operations, biometric recording equipment and card services).

The bullet points below aim to ‘tell the story’ as to why the costs have changed (which is predominantly due to changes in our overall strategy for rolling out biometric residence permits and obtaining better cost estimates from suppliers).

Reconciliation of BRP costs submitted to EU Scrutiny Committee

<table>
<thead>
<tr>
<th></th>
<th>2003</th>
<th>2006</th>
<th>2007</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Setup Costs</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Staff (inc recruitment and vetting)</td>
<td>200</td>
<td>947</td>
<td>1,012</td>
</tr>
<tr>
<td>Property and IT infrastructure</td>
<td>21,250</td>
<td>38,802</td>
<td>12,333</td>
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<tr>
<td>Supply of equipment and services (inc cards)</td>
<td>—</td>
<td>5,602</td>
<td>1,045</td>
</tr>
<tr>
<td>Programme Delivery</td>
<td>2,695</td>
<td>17,283</td>
<td>7,073</td>
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<tr>
<td><strong>Total Setup Costs</strong></td>
<td>24,145</td>
<td>62,634</td>
<td>21,463</td>
</tr>
<tr>
<td><strong>Operating Costs</strong></td>
<td></td>
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<td></td>
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<tr>
<td>Staff</td>
<td>10,500</td>
<td>16,442</td>
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<tr>
<td>Property and IT infrastructure</td>
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<tr>
<td>Supply of equipment and services (inc cards)</td>
<td>2,096</td>
<td>29,900</td>
<td>11,661</td>
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<tr>
<td><strong>Total Annual Operating Costs</strong></td>
<td>15,359</td>
<td>56,354</td>
<td>22,213</td>
</tr>
</tbody>
</table>

**Difference Between 2003 and 2006 Cost Estimates**

— The 2003 set up costs included only early estimates for the IT elements and property acquisition;
— The 2003 operating costs comprised mostly staff and maintenance of the IT infrastructure;
— By 2006, BIA had undertaken significant work on the project and this detailed understanding allowed a far better estimate of set up costs to be developed;
— 2006 costs were also significantly increased by widening the project’s scope to include other elements of the case working process, such as risk assessment of applicants. They also include costs associated with the proposed procurement approach. The consequence of these changes was an increase in both setup and operating costs;
— The increase was in part driven by greater staff requirements;
— Card production estimates also increased significantly since 2003;
— The assumptions regarding numbers of applicants also significantly increased in the 2006 estimates (which more than doubled from the assumption used in the initial 2003 calculation).

**Difference Between 2006 and 2007 Cost Estimates**

— Changes in the approach to procurement resulted in significant reductions in supplier cost estimates, including in particular more accurate cost estimates for IT and property elements of the project (including cost of the card). Additionally this allowed us to produce more realistic assumptions for optimism bias and the level of contingency included in the estimates;
— Costs have been recast as resource funding rather than capital funding as services rather than assets are being purchased;
— Costs for risk assessment and application processing are now excluded from these estimates as they are being taken forward independently as part of wider modernisation of the migration process;
— Card volume assumptions were clarified and projected at around 870,000 per year in steady state.

**Letter from the Chairman to Liam Byrne MP**

Thank you for your letter of 8 November 2007 in reply to mine of 14 June. Your letter also considers the points raised in my letter of 17 October. Sub-Committee F of the House of Lords Select Committee on the European Union considered your letter at a meeting on 14 November 2007.

We are grateful that your letter included the breakdown of the costs of setting up and running the Biometric Residence Permit project. As you know, this is information which we have sought for six months—in the case of the 2003 and 2006 figures, for over a year. We are glad at last to have been able to study these figures. The explanations for the differences in the estimates still seem to us to leave a number of questions unanswered.

In particular, a reduction of over £11 million in the annual staff costs for operating the scheme, though welcome, does not seem to be explained, and we would be glad in due course to have a fuller explanation of this.

We note that the Presidency will be proposing adoption of this Regulation only at the December Council. In your view it follows that, if we now clear this document from scrutiny, adoption of the Regulation will not constitute a scrutiny override, even though a general approach was agreed in September. On this point, as you know, both this Committee and the Commons European Scrutiny Committee differ from you. We draw to your attention chapter 2 of the Annual Report of this Committee for 2007, published on 1 November (35th report of the session 2006-07, HL Paper 180), and in particular paragraph 127 in which we encourage the Government to review its position on general approaches.

Nevertheless, and without resiling from our view that this document is already subject to a scrutiny override, we are prepared to clear it from scrutiny.

16 November 2007

**Letter from Liam Byrne MP to the Chairman**

Thank you for your letter of 16 November 2007 in respect of the above Regulation. I am pleased that you have cleared the Regulation from scrutiny.

You raised a question about the cost information we provided. You have asked for an explanation regarding the £11 million reduction in annual staff costs for operating the scheme (now standing at £5.0 million where it was previously £16.4 million). This change results from the fact that the staff costs to cover risk assessment and application processing are now excluded from these estimates. This work is being taken forward independently as part of wider modernisation of the migration process.

I note your comments regarding paragraph 127 of the Annual Report of the Committee for 2007. I understand that the Cabinet Office will be responding to your report in due course.

6 December 2007

**Letter from the Chairman to Liam Byrne MP**

Thank you for your further letter of 6 December 2007 in reply to mine of 16 November, which was considered by Sub-Committee F of the House of Lords Select Committee on the European Union at a meeting on 9 January 2008.

We are grateful for your explanation of the reduction between 2006 and 2007 of £11m in the estimated annual staff costs for operating the scheme, which is the last outstanding issue, but we wonder whether you could give us more details of this, and in particular of which head of the budget this reduction falls under.

10 January 2008

**Letter from Liam Byrne MP to the Chairman**

Thank you for your letter of 10 January 2008.

You asked me to provide some further detail regarding the annual staff operating costs. In particular you asked “which head of the budget” the staff costs fell under. These planned costs will be part of the overall Border and Immigration Agency staffing budget from 2008–09 onwards (Managed Migration). As these are for a
future service they form part of forward looking budget plans and the apparent reduction does not represent actual head count savings (the project has not yet gone live). Further detailed work between 2006 and 2007 enabled us to revise our staffing assumptions for how many people we require to run the ongoing operation. In turn this reduced our planned budgets and the associated cost estimates.

Previous versions of our costs included costs for over 400 staff and this has now reduced to 150. As I previously informed you, this change results from the fact that the staff costs to cover aspects of the wider managed migration process, in particular risk assessment and application processing, are now excluded from these estimates. This work is being taken forward independently as part of wider modernisation of the migration process.

The majority of the staff costs for BRP relate to the staff who will be running the fingerprint enrolment centres. Not all are required from day one—the numbers of staff will rise over time.

You will recall that we will report regularly to Parliament on the costs of the biometric residence permits scheme as part of our wider plans to introduce identity cards for foreign nationals. This is in the form of the Identity Cards Scheme Costs Report which is issued every six months. Any changes to our costs will be reflected in that document giving transparency and a clear audit trail if things change. I hope that as you have now cleared this matter from scrutiny we are able to handle any further enquiries you may have on costs via officials.

4 February 2008

Letter from the Chairman to Liam Byrne MP

Thank you for your further letter of 4 February 2008 in reply to mine of 10 January, which was considered by Sub-Committee F of the House of Lords Select Committee on the European Union at a meeting on 5 March 2008. We are grateful for your explanation of the cause of the reduction in staff costs, and the reason they cannot be allocated to a particular head of the budget.

As you know, the Sub-Committee were originally very concerned at the large disparities in the different estimates of the cost of this scheme to the UK. We are grateful that you have fully answered our questions in the course of this protracted exchange of correspondence. For the present we have no further issues to raise. Should any further issues arise, we would be content for the Clerk of the Sub-Committee to raise them with your officials.

6 March 2008

VISA INFORMATION SYSTEM (VIS) UNDER THE SCHENGEN BORDERS CODE (6970/08)

Letter from the Chairman to Meg Hillier MP, Parliamentary under Secretary of State, Home Office

Sub-Committee F of the European Union Select Committee considered this proposal at a meeting on 26 March 2008.

We regret the lack, yet again, of a fundamental rights analysis for this proposal and do not accept your argument that this need not be provided for proposals which the UK does not participate in. We are aware from your letter of 6 March relating to the Proposal for a Regulation amending Regulation 2252/2004 on standards for security features and biometrics in travel documents (Document 14217/07) that you are consulting across the Government on this issue, and Liam Byrne also wrote on 6 March, twice, in relation to the same issue arising in two other items of draft legislation. We look forward to hearing the outcome. In the meantime, the Committee will keep this document under scrutiny until it is in a position to look at the substance of the proposal.

27 March 2008
Social Policy and Consumer Affairs
(Sub-Committee G)

ACQUISITION AND PRESERVATION OF SUPPLEMENTARY PENSION RIGHTS (13857/07)

Letter from the Chairman to James Plaskitt MP, Parliamentary Under Secretary of State,
Department for Work and Pensions

Your Explanatory Memorandum dated 30 October 2007 was considered by Sub-Committee G at their meeting held on 15 November.

We accept that the Commission’s revised Directive shows improvements compared with the version which we cleared from scrutiny in May of this year. We continue to believe also that the introduction of an acceptably worded Directive would protect the pension rights of mobile workers and introduce the same minimum standards throughout Europe, thus facilitating greater mobility and economic efficiency.

Nevertheless, we share your serious concern that, unless the existing provisions of the Directive relating to waiting times and vesting times are changed, the consequent high costs to UK employers and employees resulting from the application of the Directive would be unacceptable.

It is fortunate that the UK has some strong support among other Member States for the need to change these aspects of the Directive in negotiation, and that protection from the costs which would result from the imposition of an unacceptable Directive is afforded by the fact that, under Treaty Article 94, agreement to the Directive in Council must be unanimous.

We think it essential that these issues should be resolved before the UK supports the amended Directive in Council, and we urge you and your officials to continue to pursue them vigorously.

We are prepared to clear the Document from the scrutiny reserve so that you are able to support an agreement in Council if negotiation does result in an acceptable form of the Directive being brought to the meeting on 5 and 6 December.

However, we ask you to write to us urgently if anything changes the present position that you will only agree in Council to a text of the Directive—relating to minimum waiting periods and vesting periods—if it is changed from the present text in such a way that significant additional cost to supplementary pension schemes will no longer arise.

16 November 2007

ACTIVE INCLUSION OF PEOPLE FURTHEST FROM THE LABOUR MARKET (14101/07)

Letter from the Chairman to James Plaskitt MP, Parliamentary Under-Secretary of State,
Department for Work and Pensions

Your Explanatory Memorandum dated 6 November was considered by Sub-Committee G at their meeting held on 22 November.

We recognise that the Communication is essentially a consultation and note your view that, even if this leads to the proposed Recommendation being subsequently agreed in Council Conclusions, there would be no impact on UK domestic policy.

Nevertheless, the principles set out by the Commission are very wide reaching and, dealing as they do with the subject of social inclusion, necessarily cover a number of policy areas. We think it essential therefore that the UK Government should be most vigilant in assuring that any actions at EU level resulting from the consultation should not stretch the bounds of EU competence in any way and, to the extent that the EU shares competence with Member States, should fully respect subsidiarity.
While we are content at this consultation stage to clear the Commission document from scrutiny, we ask you to draw our attention as soon as possible to any concerns that there might be in the future, arising from this Commission activity, relating to the issues of competence or subsidiarity. We ask you also to send us a copy of the UK response to the consultation.

22 November 2007

Letter from James Plaskitt MP to the Chairman

My Explanatory Memorandum dated 6 November advised the Scrutiny Committees of the Commission’s proposal for a further consultation on Active Inclusion. In that Memorandum, I indicated that the UK Government would be responding to the consultation and that I would copy this response to the Committees.

The UK Government’s response has now been finalised and sent to the Commission. I am pleased to enclose a copy of the response¹ (not printed) with this note.

10 March 2008

ADULT LEARNING ACTION PLAN (13426/07)

Letter from the Chairman to Bill Rammell MP, Minister for Life-long Learning, Further and Higher Education, Department for Innovation, Universities and Skills

Your Explanatory Memorandum dated 17 October 2007 was considered by Sub-Committee G at their meeting held on 15 November.

We welcome the Government’s support for actions designed to raise the level of adult skills across the European Union, and we are particularly encouraged that these actions will be consistent with the programme of work to be taken forward in this country in implementing the valuable recommendations of Lord Leitch’s Review.

We now clear this Commission document from scrutiny.

16 November 2007

CHILDREN IN EU EXTERNAL ACTION (6175/08)

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

Your Explanatory Memorandum was considered by Sub-Committee G at their meeting held on 27 March.

We take the view that the basis of the Commission’s Communication—that the EU should show sensitivity towards issues affecting children in the context of its external policies and actions—is both commendable and uncontroversial.

We understand that the Government’s position is that the proposals in the Communication are all in line with existing UK policy. We welcome your assurance that, if future EU actions which result from the Communication lead to specific measures with legislative implications for the UK, then separate, individual EMs will be put forward for parliamentary scrutiny.

On this basis, we are content to clear the document from scrutiny. Please would you write to us following the General Affairs and External Relations (GAERC) Council meeting to be held in June 2008.

28 March 2008

¹ http://ec.europa.eu/employment_social/spsi/docs/social_inclusion/member_states/uk_en.pdf
CONSUMER PROTECTION: SALE OF TIMESHARE AND OTHER LONG TERM HOLIDAY PRODUCTS (10686/07)

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

Thank you for your letter of 23 October 2007 which followed the evidence I gave to the Chairman and members of EU sub-Committee G at their meeting on 18 October.

This letter addresses your questions following the points covered in my letter to you of 16 October.

Definition of Timeshare—“Overnight Accommodation”

The intent behind the Commission’s proposed amendment to the definition of timeshare in Article 2 is to extend the coverage of the current directive to timeshare contracts which relate to more than accommodation in real property, as is currently the case. For example, the Timeshare Act 1992 went further in this respect and included caravans.

However we are concerned that other arrangements which grant rights to repeated periodic access to accommodation, in its widest sense, over a period of more than one year should not be inadvertently caught. For example, access to boxes in theatres or seats in sports stadiums. It would not be appropriate that these arrangements should be considered timeshare agreements and subject to the requirements of the directive.

Another element of the proposed change is that the qualifying period of occupation of at least seven days is gone, which would have discounted the arrangements we have in mind.

We are also concerned that the definition should be broad enough to take into account accommodation of the type which we know is currently the subject of timeshare arrangements, for example, caravans (already covered in the UK) and accommodation in boats, such as canal boats, cruising yachts or cruise ships. The element which all of these different arrangements have in common, in terms of timeshare contracts, and which those arrangements which we do not believe should fall within the directive do not share, is that they incorporate overnight accommodation.

The Presidency has now proposed using the term “overnight accommodation” in the definition.

Definition of Exchange

We are concerned that the currently proposed definition does not properly describe the nature of exchange contracts, relying as the proposal does on the concept of modification of a timeshare owner’s contractual rights.

In our view, and the view of the two main exchange companies who have their European bases in the UK, the service can be far more accurately expressed, and, as currently drafted, the definition would not catch exchange services as we understand them.

We have therefore proposed a definition which is based on the feature that exchange allows the consumer to use the timeshare rights of others (or sometimes other benefits) in exchange for others using their timeshare rights. We believe this captures what actually happens. It will be appreciated that there is no modification of timeshare owners’ rights; it is simply that the timeshare owner makes his rights available for the use of other participants in the exchange system.

It is also important to ensure that the definition does not tie the system just to overnight accommodation which is the subject of other consumers’ individual timeshare rights. A proportion of the accommodation in an exchange system’s portfolio might well consist of unoccupied or unsold timeshare weeks which are deposited by resort operators as a means of providing for higher occupation rates in their resorts. This is an additional service to enable the timeshare owners in their resort access to an exchange system via mechanisms such as “points” purchase without depositing their own rights.

Exchange Contracts

An exchange contract is, by its nature, an ancillary contract to a main timeshare contract. Without a timeshare contract a consumer has nothing to deposit into an exchange system and so cannot exchange.

As currently drafted, the proposal imposes a cooling off period on exchange contracts separately from a main timeshare contract. In my letter of 16 October I outlined the circumstances that have been identified as the source of consumer detriment and the relatively low costs associated with exchange contracts. This detriment

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has been identified in relation to the promises about the possibility for exchange within a system during the sales process.

You ask about the issues of principle underlying our approach to the coverage of exchange. The principle we are seeking to apply is that of proportionality; to ensure that the provisions provide consumers with adequate protection against the identified nature of detriment while not imposing unduly onerous or unnecessarily complex provisions on the exchange systems.

The proportionate approach to dealing with this detriment is not in our view by applying a separate cooling off period to these contracts, but by applying the information requirements in the proposal, which in turn applies that information to the contract. These seek to ensure that consumers are provided with accurate descriptions of how the system works and what their individual membership will entitle them to in terms of exchange possibilities in the system. In addition, we are proposing that the information requirements should also include details of restrictions on access to particular exchanges which might be the result of peak periods of demand for particular resorts, and that the exchange operator should be obliged to inform the consumer when any particular exchanges which they might apply for attract any additional charges over and above the exchange fee, for example for the use of facilities.

In our view, the rationale for imposing a ban on payment before the completion of a separate cooling off period does not apply to the exchange situation. As an ancillary contract, the proposal ties the cooling off period for a timeshare purchase to an exchange contract agreed at the time of the timeshare sale. The exchange companies advise us that the consumer is provided with a copy of the exchange contract at the same time as they agree a timeshare contract. Under the proposal, the consumer will have been provided with the required information at this time, and that information will be included in the contract. If they withdraw from their timeshare contract within the cooling-off period, the exchange contract will automatically fail. It should be noted, however, that, while the exchange contract is provided to the consumer when they agree their timeshare contract, that contract is rarely concluded at that stage in case the consumer withdraws from their timeshare contract. The exchange contract is generally concluded once the cooling-off period has passed so that the consumer then owns something they can exchange. It will be appreciated therefore, that a separate cooling off period for exchange would only begin when the timeshare cooling off period has been completed—effectively doubling the period during which a consumer might withdraw from an exchange contract in circumstances where we doubt that a cooling off period is justified by the evidence of detriment in any case.

The issue of possible demands for advance payments for exchange contracts at the point at which the consumer signs a timeshare agreement and whether that might produce a loophole has not been raised in Council Working Group discussions. Of course, advance payments for timeshare contracts are already banned under the current directive, the proposal seeks to clarify and tie down this ban more thoroughly because I understand that in some countries payments into trust-type accounts have been permitted. Those arrangements have been criticised by the Commission in terms of implementation. At the same time, exchange contracts have not been regulated and have not been subject to that ban. To our knowledge exchange contracts have not been exploited as providing an alternative means of achieving up-front financial commitment from consumers for timeshare purchases in the way you have described.

While we understand that there are some small exchange systems operated between groups of resorts, the main systems, accounting for by far the greatest number of exchanges, are separate organisations from timeshare operators. As mentioned above, the exchange contracts are unlikely to be entered into without something to exchange and the companies are unwilling to enter into contracts until the timeshare sale is completed, post cooling-off period. Any contractual arrangement for payment for exchange membership would not therefore generally apply until the completion of the associated timeshare contract and subsequent conclusion of the exchange contract. In these circumstances an advance payment for the exchange contract would not therefore appear to carry any benefit from the “tying-in” effect for a timeshare company because the consumer would already have had the “no-strings” opportunity to withdraw within the cooling-off period for the timeshare contract. We have no evidence, therefore, which suggests that exchange contracts have been or would be used as described.

In discussion, the Commission have raised a different concern; that timeshare sellers might somehow masquerade as exchange companies to benefit from the lighter regime. Our view on that is that, if the end result is that a consumer owns a timeshare, then, irrespective of what it looks like, the seller is selling timeshare and will be caught under the rules which apply to selling timeshare, not exchange. The Commission’s comment is an argument for seeking to ensure that the enforcement authorities keep abreast of developments in this market and remain alert to opportunities to deceive.
RESALE CONTRACTS

The definition in the Commission proposal covers contracts where a trader helps a consumer to buy or sell timeshare or long-term holiday products. In our view this does not cover the situation where a trader might acquire a timeshare contract from a consumer and then chooses to sell that timeshare contract on. It covers the services of an intermediary who undertakes, on behalf of the consumer, to identify a buyer and arrange for the sale by the consumer of the timeshare contract, in much the same way as a real estate agent acts for the seller of real property.

I can confirm that it is our view that where a trader acquires a pre-owned timeshare contract for onward sale on his own behalf to a consumer, then he will be selling a timeshare contract as a trader and will be subject to the provisions of the directive as they apply to timeshare sales, including in respect of the cooling-off period.

We support this position.

The Committee is not quite correct in concluding that the Government’s objection to a cooling-off period in respect of resale contracts applies only to the sale of a timeshare by a consumer to a trader. Rather, our objection is to a cooling-off period applying to the arrangement between the consumer and the resale “agent” whose role is as intermediary between the consumer and the buyer, be that another consumer or another trader. We support that the proposal denies any payment to the resale “agent” before a sale is concluded or the agency contract is otherwise terminated.

I hope this helps to clarify the Government’s approach to the matters you have raised, and look forward to your Committee’s report in due course.

10 November 2007

COORDINATION OF SOCIAL SECURITY SYSTEMS WITH THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA, TUNISIA, CROATIA, ALGERIA, MOROCCO AND ISRAEL (16599/07, 16688/07, 5081/08, 5083/08, 5107/08)

Letter from the Chairman to James Plaskitt MP, Parliamentary Under Secretary of State, Department for Work and Pensions

Your Explanatory Memorandum, dated 21 January, was considered by Sub-Committee G at their meeting held on 7 February.

We understand that to a large extent the proposals set out by the Commission would have the effect, for the UK, of simply formalising existing arrangements for reciprocal social security provision.

We understand also that the only area of doubt relates to the potential provision of child tax credit to nationals from Croatia, Former Yugoslav Republic of Macedonia and Israel who are currently excluded from that entitlement when working in the UK.

Despite this doubt, since you provide the assurance in your EM that the extra benefit costs, which might arise if child tax credit is extended to these countries, will be minimal, we are content to clear these documents from scrutiny.

Please would you let us know the position you decide to take on the child tax credit issue?

7 February 2008

COSMETIC PRODUCTS (6725/08)

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

Your Explanatory Memorandum was considered by Sub-Committee G at their meeting held on 27 March.

We agree with your view that the Commission’s proposal, to replace the existing 1976 Cosmetics Directive, appears to be largely advantageous. We understand the need to strengthen the protection for users of cosmetics by introducing more effective safety assessment of these products before they are put on the market. Given that the existing Directive has been amended 55 times, and that its continuing amendment causes a considerable burden of administrative work, we also see the need to simplify and clarify the legislation in this area.

We accept that the concept of recasting the Directive as a Regulation looks right since this should remove existing legal uncertainties and inconsistencies.
We have real concerns that there will be additional costs for business caused by the need to conduct more rigorous safety assessment work, but we understand the Commission’s point that these will largely fall on companies who in the past have not carried out robust safety assessments. We also welcome your assurance that there will be savings for business overall, in terms of a considerable decrease in administrative costs, which will balance the extra costs of safety assessment.

We are therefore content to clear this document from scrutiny. We ask you to write to us further on this subject, with a copy of the full UK impact assessment you plan to carry out, once the detail of the proposed Regulation has been settled.

28 March 2008

CREDIT AGREEMENTS FOR CONSUMERS (9948/2/07)

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

Your Explanatory Memorandum dated 12 November was considered by Sub-Committee G at their meeting held on 29 November.

The EM sets out with admirable clarity the details of the improvements which were made to the text of the directive agreed in May 2007, compared with the text originally proposed. In particular, it provides information about how the points of difficulty, that were still outstanding when we last wrote on 27 April, were resolved.

We would find it helpful if you could write to us to let us know the outcome of the European Parliament’s second reading of the common position text and to describe what, if any, changes to the directive are required by the European Parliament before it can be adopted on the basis of the co-decision procedure.

We now clear the document from scrutiny.

29 November 2007

Letter from Gareth Thomas MP to the Chairman

Thank you for your letter of 29 November 2007 in response to the above EM.

I am writing now to inform you that the proposed Directive was the subject of an agreement between the European Parliament and the Council during the Parliament’s second reading which was completed on 16 January 2008.

I consider that the agreement reached by the European Parliament was a very good one from the UK’s perspective and that the revised text has delivered further improvements as compared with the common position text that was the subject of EM 9948/2/07.

The key changes made by the Parliament are as follows:

— Article 2—the scope of the Directive has been amended so that it now applies to credit agreements up to the value of EUR 75,000 as opposed to EUR 100,000. The advantage here is that this now allows us more flexibility when implementing into UK law and would, for example, make it easier to give special treatment to high net worth agreements, as is provided for under the Consumer Credit Act 2006. It would not, however, prevent us from applying the provisions of the Directive to loans above the ceiling.

— Article 2—the provisions concerning the light-touch regime for overdrafts have also been subject to re-ordering with the list of information requirements that apply to overdrafts now specifically detailed in Article 10. There has also been some further, minor rationalisation and simplification of those requirements.

— Article 4—the provisions on Advertising have been amended so that the requirement to display standard information in a particular order no longer applies. We support this change as we do not think it appropriate to require very prescriptive rules of this kind to advertisements. The requirement to state the duration of the credit agreement is now qualified to situations where such information is applicable. Again, we support this amendment because sometimes such information is not relevant to some products being advertised, such as a credit card. We would have liked to have seen a similar change made to the requirement to state the total amount of credit. However, that change was not part of the agreement reached between the Parliament and the Council.
— Article 8—the provisions on obligations to check the credit worthiness of the consumer have been amended to clarify that it is for Member States to ensure credit checks are carried out. This issue was quite important for the industry, who were keen for clarification that the requirement would not result in automatic nullification on purely technical grounds and that it is for Member States to determine how these provisions should operate, including deciding on appropriate penalties.

— Article 10—in the list of requirements for information to be contained in a credit agreement, the requirement to provide an amortisation table for fixed term credit agreements has been amended so that such information will be not be provided automatically but at the request of the consumer. We had concerns about the burden such a requirement would impose, as well as the limited use to consumers of such information and the possibility of information overload. We therefore consider this to be a satisfactory compromise.

— Article 14—a new paragraph has been added concerning the right of withdrawal provisions. This provides that, where Member States have legislation in place in respect of linked agreements that provides that funds cannot be made available to the consumer before a specific period, then such Member States may allow the 14 day right of withdrawal period to be reduced if the consumer so requests. This derogation is not relevant to the UK as we do not have such legislation.

— Article 16—the early repayment provisions in the common position text were unwieldy and unsatisfactory in many respects, in particular because they would have made it very difficult for lenders to reclaim justified compensation from consumers who settled loans early and would have been unclear to consumers. A compromise has been reached that simplifies the way these provisions work and would allow lenders to claim compensation of up to 1% of the amount of the credit that has been repaid early. There is also an option for Member States to allow lenders to claim further compensation if they can prove they have suffered losses greater than the 1% figure mentioned above. This is a considerable improvement on the common position text, although some lenders may still feel the amount of compensation allowed will not fully compensate them for losses suffered, and it is still the case that the provisions only apply to fixed rate loans.

— Article 21—the provisions dealing with the obligations of credit intermediaries have been amended to provide fewer restrictions on the ability of an intermediary to charge a fee to a consumer. We support this change on the basis that the original restrictions were unjustified and might have impeded consumers’ ability to seek independent advice.

— Annex I—the list of assumptions to be used in calculating the APR have been amended. The annex now provides that the charge to be assumed where an agreement provides for different methods of drawdown should be the highest which applies to the most commonly used drawdown mechanism rather than the one that attracts the highest charge. We support this change as applying the highest rate of charge would have had a distortionary effect on credit card APRs in the UK. The assumption concerning agreements where there is no timetable for repayment has also been the subject of minor re-wording which we think means there is less scope for confusion as to which assumption applies in these cases. Finally, the assumption in respect of credit ceilings that have not yet been agreed has been raised to EUR 1,500 (previously EUR 1,000). This is also an improvement, although it still seems quite low considering the equivalent assumption in the existing Directive is EUR 2000. However, this is a compromise figure which reflects the contrasting state of credit markets across the EU and there is provision for the European Commission to review it in the future.

Overall, therefore, I think this package represents a significant improvement compared to the original proposal. In addition to the improvements mentioned above, we have also safeguarded important concessions already gained during the Council’s First Reading—for example, exemption of credit unions, light touch treatment for overdrafts, special treatment for Islamic Home Purchase Plans, and requiring Typical APRs to be displayed in certain circumstances.

We expect the Directive to be formally adopted during the spring at which point Member States have two years in which to implement it. We will of course be carrying out a detailed consultation on the UK’s implementation of the Directive.

24 January 2008
ERASMUS MUNDUS PROGRAMME 2009-13 (11708/07)

Letter from Bill Rammell MP, Minister of State for Lifelong Learning, Further and Higher Education, Department for Innovation, Universities and Skills to the Chairman

Thank you for your letter of 16 October clearing this Commission document from scrutiny.

You asked for a report on the progress the Government has made in encouraging more UK students to undertake periods of study abroad and to participate in the Commission’s Erasmus programme.

We continue to believe that the EU-funded Erasmus programme offers excellent opportunities to students to live and study abroad and to acquire the skills, including languages, which equip them to live and work in the European Labour Market. You will be interested to know that, following the transfer of the management of the Erasmus programme from the UK Socrates Erasmus Council (UKSEC) to the British Council, we have been working closely with the British Council to see how we can start to reverse the unwelcome trend of decreasing numbers of UK students taking up these opportunities.

The British Council has been active in promoting Erasmus in a number of different ways to several audiences, in particular to sixth formers, university and college students, and academics. It does this through a number of different mechanisms, including a website, promotional material and visits of former Erasmus students to schools, and HE institution open days. This work is assisted by the Erasmus Student Committee, which has itself organized events to promote and further interest in the programme. The British Council is also seeking to involve employers in conveying the value of an experience of work or study abroad and is to establish a Consultative Group of stakeholders (including Government, institutions and social partners) to advise on strategies for promotion of the programme, and encouraging HEIs to provide language and cultural preparation as an integral part of mobility activity.

Given that Erasmus now encompasses all technical and vocational provision at tertiary level, the British Council also believes that there is a real opportunity to foreground technical and vocational courses in HE, put them at the heart of the marketing and promotion campaign for Erasmus, and to engage with HEIs in mainstreaming Erasmus mobility. The Council is therefore focusing attention on courses and sector specific areas, such as Foundation Degrees in the creative industries or financial services, promoting Erasmus participation to students and staff on courses designed to meet the skills gaps and needs of industry. This represents a new way of working in this programme.

Earlier this year we worked with the Council for Industry and Higher Education to put together some examples of the way in which higher education institutions are internationalising their provision and promoting outward student mobility. The ensuing guide showed what some of the most outward-looking institutions are doing and how the perceived barriers to overseas study can be overcome. We hope that these examples of good practice may encourage other HEIs to think about what they might do to enhance opportunities for greater outward student mobility.

I am pleased to be able to tell you that all this activity seems to be having an impact. In 2006–07, the final year of the previous Programme (Socrates II), there appears to have been a modest increase (almost 2%) in the level of outward UK Erasmus student mobility to a total of 7,256. Initial indications for 2007–08 are also promising and suggest that there will be a significant increase on this number. I am sure the Committee will welcome this.

You also asked about the proportion of Erasmus students from third countries choosing the UK as their destination. In contrast to the Erasmus Mundus programme, students from third countries are not eligible for Erasmus. Only students from the European Union Member States, Norway, Iceland, Lichtenstein and Turkey are able to participate in Erasmus.

9 November 2007

E-SKILLS FOR THE 21ST CENTURY: FOSTERING COMPETITIVENESS, GROWTH AND JOBS

Letter from Bill Rammell MP, Minister of State for Lifelong Learning, Further and Higher Education, Department for Innovation, Universities and Skills to the Chairman

Thank you for your letter of 18 October 2007 regarding the e-skills Communication.

There are no specific links drawn between the e-skills agenda and the proposal to establish a European Institute of Technology (EIT). However the EIT will support partnerships between organisations in the areas of research, education and innovation, organisations that will be expected to demonstrate a high level of e-skills.

1 Correspondence with Ministers, 11th Report of Session 2008–09, HL Paper 92, p 313.
The Commission produced an information leaflet on the EIT earlier this year which used the Information Society as an example of a strategic area for the KICs.

Regarding the potential for duplication more broadly, further to our initial concerns regarding overlap between the e-skills agenda and activity in education and training, we are now content that the various policy strands are working together. In particular, the development of an E-competence framework, which is related to the European Qualifications Framework, will be the first of many sector based competency framework initiatives which feed into the EQF. The e-skills agenda is a cross-cutting one, and UK officials will continue to work across Government and with the Commission to ensure a coordinated approach.

You raise an important point about the principle of subsidiarity. Section C of the integrated Council conclusions on Competitiveness, which were agreed at Competitiveness Council on 22–23 November 2007 relates to the E-Skills strategy. During negotiations, UK has secured wording stating that any new proposals to take forward the five action lines set out in the Commission’s Communication E-Skills for the 21st Century: fostering Competitiveness, Growth and Jobs will be consistent with existing initiatives and will respect Member States’ responsibility for their education and training systems. I am therefore content that the principle of subsidiarity will be respected.

12 December 2007

EUROPEAN APPROACH TO MEDIA LITERACY IN THE DIGITAL ENVIRONMENT
(5086/08)

Letter from the Chairman to Andy Burnham MP, Secretary of State, Department for Culture, Media and Sport

The Explanatory Memorandum sent by your predecessor, dated 21 January, was considered by Sub-Committee G at their meeting held on 31 January.

We were interested to learn of the activities which Ofcom is undertaking in order to promote media literacy in the UK, and we understand your view that these activities make the UK well placed in terms of the way it is addressing the recommendations set out in the Commission’s Communication.

Nevertheless, we do recognise the need for the Commission’s 2008 study of criteria to assess media literacy across the EU. We would like to learn more about this study, as well as about the UK’s response to it.

We now clear this document from scrutiny and await with interest your further information about the Commission’s 2008 study and the UK’s response to it.

31 January 2008

Letter from Andy Burnham MP to the Chairman

Thank you for your letter of 31 January regarding the Government’s Explanatory Memorandum on the European Commission Communication on Media Literacy in a Digital Environment.

My department will provide the further information you have requested on the proposed European Commission study into criteria to assess media literacy levels across the EU (due to be launched in 2008) as soon as it is made available.

11 March 2008

EUROPEAN CHARTER ON RIGHTS OF ENERGY CONSUMERS (11573/07)

Letter from Malcolm Wicks MP, Minister of State for Energy, Department for Business, Enterprise and Regulatory Reform, to the Chairman

Thank you for your letter of 16 October 2007 to Pat McFadden, about the ways in which we comply with the public service obligations in the Electricity and Gas Directives. I am replying as the matter raised falls within my portfolio.

These obligations are met by a mixture of domestic legislation and conditions in operators’ licences.

The UK has had legislation promoting universal service for household consumers for some time. Under section 16(1) of the Electricity Act 1989, electricity distributors are required, upon request, to make a connection to supply electricity to premises and to provide electric lines or electrical plant or both as necessary. Under section 19(1) of the Electricity Act 1989, the distributor may require any expenses reasonably incurred

3 Correspondence with Ministers, 11th Report of Session 2008–09, HL Paper 92, p 316.
in providing such a connection (including lines and/or plant) to be defrayed by the person requiring the connection to such extent as is reasonable in all the circumstances.

Suppliers are also required by their licences to offer to supply customers who request a supply from them. Between them these conditions ensure our compliance with the terms of Art 3(3) of the Electricity Directive. With regard to households in remote parts of the UK, I am not aware of any current problems with implementation of Article 3(3) of the Directive.

In relation to the protection of vulnerable customers required by Article 3(5) of the Electricity Directive and Article 3(3) of the Gas Directive, Ofgem has statutory obligations to protect the interests of those who are of pensionable age, disabled, chronically sick or on a low income. Ofgem’s Social Action Strategy sets out how it plans to meet these social responsibilities and help the Government to meet its target for eradicating fuel poverty. The Strategy also aims to focus political attention and act as a catalyst for the development of solutions to the problems faced by vulnerable customers.

Licensed companies also have duties to protect certain vulnerable customers. Suppliers are required to offer a range of free services on request to those of pensionable age, disabled or chronically sick. Such services include reading meters regularly to ensure accurate billing, third party billing and the provision of free facilities to enable blind or deaf customers to ask or complain about any bill or statement.

Suppliers must offer a wide range of payment methods such as cash or prepayment. They must also assist customers with difficulty in paying for their energy by accepting various payment methods, taking account of a customer’s ability to pay for debt and providing energy efficiency information to help reduce energy use in the future. In addition, suppliers cannot disconnect in winter customers who are of pensionable age, or who only live with others of pensionable age or who are under the age of 18. Suppliers also have to take all steps to avoid disconnecting in winter premises housing anyone who is of pensionable age, disabled or chronically sick.

Distribution companies have licence obligations to protect certain vulnerable customers. Electricity distributors hold a register of customers who rely on electricity for medical reasons or who have special communication needs and have to provide such customers with advance notice for planned interruptions. Gas distributors are also required to provide alternative heating and cooking arrangements to certain vulnerable customers in the event of supply interruptions.

In addition, Ofgem monitors company performance in relation to debt and disconnection and works with industry government and stakeholders to encourage best practice in the further protection of vulnerable customers and elimination of fuel poverty.

13 November 2007

EUROPEAN INSTITUTE OF TECHNOLOGY (10361/06, 14871/06)

Letter from Ian Pearson MP, Minister of State for Science and Innovation, Department for Innovation, Universities and Skills to the Chairman

As requested in your letter dated 5 July 2007, I am writing to update your committee on the progress of the EIT negotiations.

During the Autumn a number of trialogue meetings took place between the Portuguese Presidency, European Parliament and European Commission. A compromise legislative text emerged from these discussions, on which the 23 November Competitiveness Council reached political agreement. A copy of the agreed text is attached (not printed), which retains all the essentials of the Council’s General Approach text agreed at the 25 June Competitiveness Council.

The main changes to the text submitted to your Committee in June are:

— The name of the body will change to the European Institute of Innovation and Technology, although the acronym EIT will remain (Article 1).

— The EIT’s Governing Board are to select and set up the first Knowledge and Innovation Communities within 18 months (rather than 24 months) from the date that the Governing Board is appointed (Article 18.2).

— The Governing Board will comprise 18 members, as opposed to 15 in the Commission’s original proposal (Annex Article 1.2).

— Selection of KICs to take into account measures to support the involvement of and cooperation with the private sector, including the financial sector and in particular SMEs (Article 7f).

— The inclusion of the next generation of information and communication technologies as one of the possible priority areas for KICs (Recital 24).

I believe that the agreed text provides a solid basis for the EIT to support European innovation. The text is consistent with the UK’s negotiating objectives and provides for an initial phase of a small number of Knowledge and Innovation Communities (KICs), followed by robust evaluation before any future Council and European Parliament decision can be taken on expanding the number of KICs. The text provides substantial autonomy for the individual KICs, while maintaining transparency and accountability. It also preserves autonomy for higher education institutions in determining whether to add the EIT label to their qualifications.

The direct Community contribution to the EIT budget will be €308.7 million (as in the original Commission proposal). In addition, the Budget Council reached agreement on 23 November on the source of funding for EIT, as part of a wider funding package with Galileo. My colleague Kitty Ussher wrote to your committee on 28 November on the outcome of this meeting, and provided a further update on 12 December.

It is likely that the compromise legislative text will be formally adopted as the Council’s Common Position as an “A point”, at a Council meeting early in 2008, and that formal European Parliament approval will follow thereafter.

19 December 2007

EUROPEAN JOB MOBILITY ACTION PLAN 2007–10 (16318/07)

Letter from the Chairman to James Plaskitt MP, Parliamentary Under Secretary of State, Department for Work and Pensions

Your Explanatory Memorandum dated 2 January was considered by Sub-Committee G at their meeting held on 17 January.

We recognise that the Commission’s Communication addresses the serious issue of promoting jobs and growth across the EU, a policy which the UK supports in the context of the Lisbon Strategy. We understand also that the action plan set out in the Communication does not, for the present, require any legislative action.

However, while we accept that it may be the case that the action plan is indeed both justified and beneficial, we cannot assess this from the fairly scanty information provided in the EM which you supplied.

In order for us to assess effectively whether our scrutiny reserve should be lifted from this document, we would therefore be grateful if you could write to us further providing the Government’s view (not a full impact assessment) of each of the 15 suggested actions.

We would find it particularly helpful if this additional information can include:

(a) whether the action is within Community competence and, if so, what is the Government’s view of its merits;

(b) for actions directed at Member States—what the UK expects to achieve in relation to the action during the period of the Commission’s assessment of progress;

(c) for actions directed at the Commission itself or the EURES—what impact for the UK the Government envisages will result during the assessment period and beyond.

Pending your reply with this information, we will retain this document under scrutiny.

18 January 2008

Letter from James Plaskitt MP to the Chairman

You wrote on 18 January asking for further detail to be supplied on the above Communication following the submission of my Explanatory Memorandum of the 2 January.

You ask for the Government’s view of each of the suggested actions in the Communication and in particular: whether the actions are within the Community’s competence and the Government’s views of their merits; what the UK expects to achieve during the period of the Commission’s assessment of progress in relation to actions for Member States; and what impact for the UK the Government envisages will result during the assessment period and beyond for actions directed at the Commission or EURES.

The Government considers that the proposed measures fall within Community competence by virtue of the fact that the aim and purpose of the measures concern the free movement of persons and the coordination of employment policies, both of which fall within Article 3.1 of the Treaty establishing the European Community (TEC). The Treaty article establishing the European Social Fund says that “it shall aim to render the
employment of workers easier and to increase their geographical and occupational mobility within the Community” (TEC Article 146).

I set out below the Government’s response to each of the proposed actions.

Action 1: The Government believes that such an examination has merit because it is sensible to ensure that the provisions for the coordination of social security are fit for the 21st century. Member States have already had discussions at official level to start to assess whether changing patterns are developing. We envisage further discussions and information gathering over the next year and would expect the Commission to bring forward proposals to deal with issues that arise during these discussions.

Action 2: We believe that the Training and Reporting in European Social Security (TRESS) network has value but at this stage we see no need to include a specific provision within the legislation.

Action 3: The electronic exchange of data has been agreed and will be valuable in ensuring speedy resolution of claims, more efficient processing of data and improved detection of fraud and error. Discussions are already well underway in the area of electronic exchange of information. Member States have agreed that the legislation will be changed to ensure that we will move away from paper exchange and exchange all data electronically. We expect that the impact on Social Security coordination will be beneficial. The introduction of the electronic European Health Insurance Card (e-ehic) will be at Member States’ discretion. What will be included on the e-ehic and how it will be implemented is still under discussion by Member States. Once these discussions are completed the UK will undertake a cost benefit analysis before taking a decision on its implementation in the UK.

Action 4: The Government supports the Directive’s aim of facilitating labour mobility and it believes that when workers change employment they should be able to do so with confidence in any pension rights they have acquired. The Government supported the drafts presented to the EPSCO Council on 30 May and 5 December 2007, and hopes that the Commission will be successful in pursuing agreement under the European Job Mobility Action Plan. The UK expects that negotiation on this Directive will continue under the Slovene and French Presidencies as necessary in 2008. The Government intends to continue its supportive stance on this Directive and expects to achieve agreement on a text which meets the agreed aims while minimising the financial and regulatory burden on supplementary pension schemes.

Action 5: The Government will be reporting on UK employment and lifelong learning strategies in our next National Reform Programme (NRP) on the Lisbon Strategy for Jobs and Growth, particularly in response to Council Recommendations in these areas. That will, for example, refer to “In Work Better Off” and our aim to improve mobility by extending opportunity to the most disadvantaged groups and areas.

Action 6: Similarly, a principle of the UK’s welfare reform is working in partnership and stakeholders will be invited to make their own contribution to the NRP on how they help deliver common objectives. Furthermore, the NRP is a companion document to the UK National Strategy Report on Social Protection and Inclusion which is developed in close liaison with stakeholders.

Action 7: The European Commission has not made a specific proposal in relation to schemes funded by the European Social Fund (ESF). The Government believes that the ESF should support Member States’ employment and skills strategies within the framework of the Lisbon Strategy for jobs and growth. In particular, the ESF should add value to and complement Member States’ policies to extend employment opportunities and develop a skilled workforce. The Government will want to assess any proposal against these objectives.

Action 8: The UK supports the objectives of the European Qualifications Framework and the European Credit Transfer System for Vocational Education and Training (ECVET), and the benefits these initiatives will give to workers in the portability of their qualifications and to learners having undertaken training in Europe to have that recognised.

Action 9: The UK is satisfied that the Commission’s objectives, to significantly improve the provision of information and raise awareness of the principle of equal access to European labour markets via its portal and advisory services, fully complies with our own approach. In particular, Jobcentre Plus fully contributes to the dialogue on diversity through membership of working groups concerned with improving the quality of information provided by the network of EURES advisers and through the Web Services portal allowing jobseekers access to full information about jobs, their suitability and ways to apply.

Action 10: The Government supports the efforts of the Commission in making jobs and opportunities available to a wide cross section of people seeking employment. Signposting is available to careers guidance and labour market information and help with creating CVs, for inclusion on EURES CV Search, a tool available to employers and jobseekers on the EURES Web Services Portal that enables matching to jobs.
Action 11: The Government is confident that the Commission can improve information on vacancy flows through drawing on data from the Home Office Workers’ Registration Scheme and information provided from the issue of National Insurance Numbers and their equivalents in other Member States. Eurostat also provides useful data on migration flows. Jobcentre Plus does not envisage any expansion to the Cross Border network involving UK partners. There is limited scope for furthering the present activity between the South of England, France and Belgium. The Northern Ireland Cross Border with Ireland is considered to be an effective mechanism for safeguarding the labour market needs of workers there.

Action 12: The UK supports access to information about the EEA labour market, and explanation of country criteria for admission to the respective Member States, for third country nationals. In particular Jobcentre Plus would fully support giving full explanation of the rules for admission to the UK in order to prevent unplanned migration. The Government would require the Commission to commit to full consultation with Public Employment Services and Home Office equivalents throughout the Member States in order to reach a consensus on how the content of EURES should be broadcast through the planned Commission funded Immigration Portal.

Action 13: The Commission have historically organised Job Fairs which directly engage employers and job seekers. The UK supports improving awareness of rights, and we do so nationally, and the exchange of good practice although we will ask the Commission to ensure that resources are primarily focused on implementing the Lisbon Strategy. See also response on Actions 9 and 10 above.

Action 14: Similarly, we support any efforts to work actively and directly in partnership with stakeholders at the EU level, as long as existing networks are used effectively to avoid adding burdens that detract from core priorities. The Government makes this point to the Commission in key areas.

Action 15: The UK like other Member States is represented on the Progress programme management committee which has ensured that the work programme and evaluation framework do embed provision for financing pilot activities and particularly enhanced exchange of good practice and dissemination of results, all of which we see as being at the heart of the Lisbon Strategy that PROGRESS supports. The Commission are also engaging a contractor to help improve communications and, again, in particular the dissemination of information and best practice to stakeholders.

Across all these activities, as we do consistently in our engagement with the EU, we promote the need to ensure effectiveness and efficiency particularly by focusing on agreed objectives and core priorities to deliver results.

5 February 2008

Letter from the Chairman to James Plaskitt MP

Your letter dated 5 February was considered by Sub-Committee G at their meeting held on 28 February.

Your letter provides us with the information we needed to assess fully the implications of the Commission’s proposed actions: whether they are within Community competence and what they can be expected to achieve.

In the light of this further explanation, we are now content to release the document from scrutiny. Please would you write to us further when the Commission’s interim report on the implementation of the Communication is published; your EM stated that this was expected in 2009.

29 February 2008

EUROPEAN YEAR FOR COMBATING POVERTY AND SOCIAL EXCLUSION 2010 (16600/07)

Letter from the Chairman to James Plaskitt MP, Parliamentary Under Secretary of State, Department for Work and Pensions

Your Explanatory Memorandum dated 14 January was considered by Sub-Committee G at their meeting held on 24 January.

We accept that the policy basis of activity across the EU, to combat poverty and social exclusion, has been fully supported by the UK Government for some time as a necessary element of the Lisbon strategy to promote jobs and growth in the EU. Moreover, we understand that the value of an EU level role in this area—to support a strategic approach and to promote collaboration between Member States—is also well accepted.

However, given that the sum that the Government envisages spending on the UK element of this initiative is not insignificant—€2.125 million (£1.52 million)—we are concerned that the Commission’s Impact Assessment (section 2.3.6 on page 18) reveals that the Commission and Member States have not yet agreed a systematic and transparent framework for reporting on the implementation and impact of the National Action
Plans for social inclusion, and that many Member States lack adequate mechanisms to monitor and evaluate the priorities.

The impact assessment goes on to state that for some Member States, this reflects a lack of expertise in undertaking adequate assessments of their policies. This is compounded by limitations in terms of the availability of data.

We would therefore be grateful if you could let us have some further information about the level of expertise available in the UK for undertaking assessment of the implementation of the type of activities envisaged under the proposed European Year for combating poverty and social exclusion. We would also like to be reassured about the nature of mechanisms the UK will put in place to monitor and evaluate the activities; and about the adequacy of the data needed to apply these mechanisms.

Pending the receipt of this further information, we will retain this document under our scrutiny reserve.

24 January 2008

Letter from James Plaskitt MP to the Chairman

Following the submission of my Explanatory Memorandum on 14 January, your letter of 24 January raised concerns about the framework for reporting on the implementation and impact of National Action Plans for Social Inclusion. You also asked for further information on the level of expertise available in the UK for undertaking assessment of the implementation of the type of activities envisaged under the proposed European Year for Combating Poverty and Social Exclusion.

The aim of the European Year for Combating Poverty and Social Exclusion is to complement activity already being undertaken by Member States under the Open Method of Co-ordination (OMC). Key aspects of the OMC are:

- common objectives on poverty and social exclusion; commonly agreed indicators to provide a means of monitoring and comparing best practice; National Action Plans (NAPs) through which Member States outline their strategies for combating poverty; and Joint Reports on Social Inclusion which include monitoring and evaluation of activity reported in the NAPs and provide a score board of progress. The programme for Employment and Social Solidarity (PROGRESS) also supports transnational studies and exchanges of good practice.

My Department is responsible for co-ordinating UK activity which contributes to the OMC and will be handling planning arrangements and activity during the European Year. There has been no indication from the Commission that we lack adequate mechanisms to monitor and evaluate policies. Indeed, we are often cited as an example of best practice amongst Member States for the strategic nature of our policy making, with its strong evidence base and rigorous analytical scrutiny.

The UK is also recognised for its comprehensive structure of targets for progress in this field.

In reporting to the Commission in the National Action Plan on Social Inclusion, we report on progress against a range of 18 commonly agreed indicators which are designed to monitor progress on the common objectives on poverty and social exclusion. These indicators are organised in a two-level structure; primary indicators covering broad fields which have been considered the most important elements leading to poverty and social exclusion; and secondary indicators intended to support the lead indicators and describe other important dimensions of the phenomena.

In addition, we measure ourselves against a range of “tertiary” indicators which have been selected by the UK, so are not harmonised at EU level. These indicators provide a more timely and detailed breakdown on information, by groupings of people or to capture information on areas not currently available at EU level. They include measurement of low income, labour market engagement (including disadvantaged groups), housing, education, health and communities (attached for information) (not printed).

The four key objectives of the European Year would be to promote: recognition of the right of people in poverty to live in dignity; public ownership of the social inclusion agenda; public awareness of the benefits of a more cohesive society where poverty is eradicated and; awareness of the commitment at all levels of governance within the EU to fight poverty and social exclusion. These are also key ambitions of the Open Method of Co-ordination and the success of the Year will be reflected in the measurement of our performance against the indicators of success of the overall strategy. In addition, the Commission will carry out community wide surveys and studies to assess and report on the effectiveness and long-term impact of the European Year.

Officials in my Department work with a group of stakeholders from across central government, the devolved administrations, local government and the voluntary and community sector to inform our contribution to the OMC. It is intended that members of this group will form the core of the UK’s National Advisory Group...
which will oversee activity contributing to the European Year. The normal rules for expenditure of public funds, probity and regard for value for money will be applied to any expenditure under this budget.

7 February 2008

Letter from the Chairman to James Plaskitt MP

Your letter dated 7 February was considered by Sub-Committee G at their meeting held on 28 February.

While it would have been even more helpful to have received it with the original Explanatory Memorandum relating to this Commission proposal, we are most impressed by the array of statistical information set out in the document “Annex 3—Indicators of social exclusion” which you provided with your letter. We see this as a valuable source of information for our future reference.

Your letter and the annex reassure us about the systematic approach taken by the UK Government in organising and monitoring the relevant data which show progress on taking forward the UK’s National Action Plan (NAP) on social inclusion. We understand also that the wide ranging expertise developed in this context will be of direct relevance for monitoring the UK’s activities contributing to the 2010 European Year for combating poverty and social exclusion.

In the light of this further explanation, we are now content to release the document from scrutiny. Please would you write to let us know the outcome of the 9 June Employment and Social Policy Council meeting, when the Commission’s proposals are currently scheduled for political agreement.

29 February 2008

FINANCIAL EDUCATION (5250/08)

Letter from the Chairman to Angela Eagle MP, Exchequer Secretary, HM Treasury

Your Explanatory Memorandum, dated 22 January, was considered by Sub-Committee G at their meeting held on 21 February.

We support the Commission’s view that it will be advantageous to raise the general level of understanding of financial products among the population as a whole.

We welcome the fact that the Commission fully accepts that it is for Member States to deliver the educational initiatives needed to achieve this goal, and we understand that the Government sees the supporting actions suggested at EU level as beneficial.

We, therefore, clear this document from scrutiny and ask you to send us, when it is available, the action plan setting out how the Government’s long-term vision for financial capability will be taken forward.

21 February 2008

FOOD ENZYMES AND FLAVOURINGS (14419/07, 14421/07, 14509/07, 14510/07)

Letter from the Chairman to the Rt Hon Dawn Primarolo MP, Minister of State, Department of Health

Your Explanatory Memoranda on the above amended proposals were considered by Sub-Committee G at its meeting of 29 November 2007.

We are content with the progress that has been made on this package but we note that the issue of setting limits for the amount of biologically active principles (BAPs) in compound foods stemming from the use of herbs and spices remains contentious.

We raised this issue in our letter of 28 June 2007 regarding dossier 12182/06 and we would urge you to continue to work for a balanced solution that both protects consumers and does not damage the interests of small restaurants and food preparation businesses.

In that light, we are content to release the four proposals from scrutiny.

29 November 2007
INCOME AND LIVING CONDITIONS (EU SILC) MODULE FOR 2009 (5869/08)

Letter from the Chairman to Angela Eagle MP, Exchequer Secretary, HM Treasury

Your Explanatory Memorandum was considered by Sub-Committee G at their meeting held on 6 March.

We accept that there are considerable benefits in collecting statistical information for policy purposes across the EU on a uniform basis so that like-for-like comparisons can be made between Member States. However, we recognise that a reasonable balance always has to be struck so that the dual needs of Member States and of the EU for information does not result in the imposition of too great a burden on individual respondents to surveys.

From the account you give in your EM, we understand that the Government’s view is that the Commission’s proposals for the collection of data through the EU-SILC module on material deprivation in 2009 would shift the balance of the overall data to be collected too far towards the EU needs, to the potential detriment of the UK’s national needs.

However, we understand also that most Member States have been able to accept the Commission’s proposals. In order that we can form a more informed judgement of the merits of the 2009 module, it would be helpful if you could write to us explaining why most Member States are better able to accept the 2009 module than the UK. Please would you also let us have your assessment of the implications for the 2009 GHS if the full module proposed by the Commission had to be added to it; including an assessment of the impact on the quality of the 2009 GHS statistics needed for domestic policy purposes.

As further background, please would you let us know whether all Member States have implemented the EU modules for previous years and, if not, how many have failed to do so. Finally, it would help to know in broad terms how thorough Eurostat’s consultation with Member States has been in respect of the proposed 2009 module.

Pending the receipt from you of this further information, we will retain this document under our scrutiny reserve.

7 March 2008

Letter from Angela Eagle MP to the Chairman

Thank you for your letter of 7 March 2008 concerning the above proposed regulation.

The Commission have now agreed to change the definition of a Child within the module to under sixteen, in keeping with the definition used in the core of the questionnaire. The Commission have also agreed to remove questions which has reduced the overall length of questionnaire. The Commission has therefore addressed the two major concerns raised by the UK. HMG are now content with the revised proposals.

The UK was certainly not alone in questioning the Commission’s original proposals. Indeed, the proposals were rejected at the Statistical Programme Committee meeting on 8 Nov because of the number of countries who had rejected the proposal.

The majority of Member States run EU-SILC as a separate stand-alone survey. In the UK the EU-SILC component has been integrated within the “vehicle” of an existing survey, the GHS. This was done to minimise respondent burden, given that there would be some overlap between the EU SILC variables and variables collected on existing surveys. This was also a more efficient way to implement the Regulation.

The GHS is a key source of data used to measure a range of Government policies. Any increase in questionnaire length or any change which disrupts the flow of the questionnaire may have an impact on response rate and therefore the quality of the resulting data.

All member states have implemented the EU modules for previous years.

HMG is content with Eurostat’s consultation with Member States in respect of the proposed 2009 module. The consultation process was sufficiently thorough, allowing reasonable time for consideration. ONS had made their concerns known throughout the consultation period.

30 March 2008
Letter from the Chairman to Angela Eagle MP

Your letter of 30 March was considered by Sub-Committee G at their meeting held on 24 April.

We welcome the news that the Commission has accepted all the points of concern which were raised by the Government about the proposed 2009 EU-SILC module on material deprivation.

We understand that, as a result, the UK is now content with the Commission’s revised proposal for the module and will therefore implement it in 2009, as in previous years, by integrating it into the General Household Survey GHS questionnaire.

We now clear this document from scrutiny.

24 April 2008

LIFELONG LEARNING ACTION PLAN (6515/08)

Letter from the Chairman to Bill Rammell MP, Minister for Life-long Learning, Further and Higher Education, Department for Innovation, Universities and Skills

Your Explanatory Memorandum was considered by Sub-Committee G at their meeting held on 20 March.

We accept that the Commission’s proposal to speed up the decision making procedure for awarding grants for lifelong learning projects seems well intentioned.

We understand that the modification to the proposed amending Decision that you wish to seek would not detract from this approach, but would ensure that any particularly significant projects are brought to the attention of Member States represented on the Lifelong Learning Programme Committee before they can go ahead.

Our view is that the safeguard you wish to pursue would be prudent and we urge you to seek agreement to it in Council and elsewhere.

We now clear the Commission proposal from scrutiny and ask you to write to us again when the final form of the amending Decision to be considered at the 22 May Education and Youth Council meeting has been decided.

20 March 2008

MARKETING AND USE OF PAINT STRIPPERS CONTAINING DICHLOROMETHANE (6689/08)

Letter from the Chairman to Lord McKenzie of Luton, Parliamentary Under Secretary of State, Department for Work and Pensions

Your Explanatory Memorandum was considered by Sub-Committee G at their meeting held on 3 April.

We understand that you disagree with the Commission’s assessment that the health study evidence, combined with the record of 18 fatal and 56 non-fatal injuries since 1989, justifies a ban on the use of Dichloromethane (DCM)-based paint strippers by both professional users and consumers. You consider that this number of injuries is insufficient to justify a ban and that the Commission’s proposal for this is disproportionate to the problem identified.

We understand also that your view is that a compromise approach might be more acceptable, although you give little idea of what this might be. Moreover, this suggestion seems to contradict the Commission’s conclusions, from its own impact evaluation, that various alternative options for dealing with the problem which do not include a ban would be difficult to implement and would not be sufficiently effective.

In order that we can understand more fully the degree of risk presented by these DCM-based products, it would be helpful if you could send us some further information about the nature of the fatal and non-fatal injuries which have been caused by them since 1989. What are the effects of DCM on the human body and in what circumstances has the use of paint strippers led to these effects causing injuries?

We understand also that DCM is a constituent of certain glue products, which have sometimes been misused as an intoxicant through glue-sniffing. Is there a related risk here which should be addressed in the context of the problem identified by the Commission for paint strippers?

Please also let us have further information about the Commission’s ideas on what means of stripping paint they suggest could replace the use of DCM-based strippers if these products are banned, respectively in the context of domestic and of industrial use. Could any effective replacement products themselves carry a risk?
We welcome the fact that you intend to carry out a formal consultation exercise and impact assessment to inform your future negotiations on the Commission’s proposals.

We will retain this document under our scrutiny reserve and will consider it further when you write to us with the further information we request, with details of the results of the formal consultation and impact assessment you plan to carry out and of the compromise approach which you intend to put forward for consideration.

3 April 2008

Letter from Lord McKenzie of Luton to the Chairman

I am writing in response to your letter of 3 April 2008, following consideration of the above proposal by Sub-Committee G. You reported that the document would be held under scrutiny pending further information from the Government, which I have set out below.

The suggested compromise position that you mentioned in your letter, was briefly set out in paragraphs 13 to 15 of the Explanatory Memorandum (EM) on the proposal. While the Government does not support an outright prohibition on the sale of dichloromethane (DCM)-based paint strippers to consumers and professionals, as proposed by the European Commission, it supports additional workplace controls for industrial use as a means to improve overall health and safety standards and to ensure good practice in the workplace, particularly in respect of small businesses. Moreover, the Government would press for:

— limitations on the quantity of DCM-based paint strippers permitted to be sold to consumers and professional users to limit the risks of spillages;
— improved formulation to increase vapour retardancy and thereby reduce the quantity of DCM vapour in the vicinity of the workplace;
— improved packaging in order to prevent spillages and splashes;
— improved labelling to make more prominent the instructions for adequate ventilation and appropriate protective equipment.

For professional use, while not supporting the proposal for a licensing scheme for users, we would, nevertheless, urge industry to promote appropriate health and safety training. In the UK, such licensing schemes are only used for the highest risk activities such as running nuclear power stations, asbestos removal and diving. Licensing professional DCM users sets an unwelcome precedent which we believe is an inappropriate use of Member State resources.

The health effects of DCM have been well-studied. The principal effects from breathing DCM vapour are narcotic. These effects include drowsiness, headache, dizziness and, at high concentrations, unconsciousness and subsequent depression of the central nervous system, which can lead to death. The health effects are generally reversible, although clearly, fatalities have occurred. The acute toxicity of DCM is low—the most important effect being on the central nervous system and elevated carboxyhaemoglobin levels. Carboxyhaemoglobin decreases blood oxygen, thereby compromising the delivery of oxygen to tissues. It is thought that the formation of carboxyhaemoglobin can produce cardiotoxic effects, although several epidemiological studies have been inconclusive in linking occupational exposure to DCM with cardiovascular disease.

DCM has been classified as a Category 3 carcinogen—this means that there is concern owing to possible carcinogenic effects, but in respect of which the information available is not adequate for making a satisfactory assessment.

In addition to inhalation, DCM can also be absorbed through the skin. Skin exposure to liquid DCM may cause irritation or a chemical burn.

With regard to the fatalities and non-fatal injuries occurring since 1989, I attach at Annex 1 a table describing the incidents reported. Although the EM quotes figures from the European Commission’s Impact Assessment (i.e. 56 people affected in a non-fatal manner by exposure to DCM-based paint strippers since 1989), this appears to be incorrect. A closer examination of the incidents listed by Research and Policy Analysts (RPA) in their 2007 Impact Assessment, from where the Commission obtained their figures, reveals that this number is, in fact, only 42. It should be noted, however, that RPA put a strong caveat on its presentation of the fatalities
and injuries data. RPA has not gone back to original sources—it relied on the information it had, and which it mentioned in its report to assess the circumstances of each incident and to make judgements as to whether or not an incident was relevant. A substantial proportion of the non-fatal accident figures appear to reflect people who have been taken to hospital as a precautionary measure following an accident and who did not, necessarily exhibit ill-health effects. In addition, the descriptions give no measure of the severity of the injuries which could be minor and reversible, such as conjunctivitis, headache, dizziness or skin irritation.

Your letter asked about the use of DCM in certain glue products and the related risk arising from solvent abuse. RPA’s Impact Assessment indicated that between 5,000 and 10,000 tonnes of DCM are produced annually for the production of adhesives. Control of such adhesives, however, is outside the scope of the European Commission’s proposals. Selling solvent-based products to those under 18 is illegal in the UK. In England and Wales, it is illegal for anyone to sell intoxicating substances if they think they are likely to be inhaled, and in Scotland it is against the law to “recklessly” sell substances to any age group if the seller suspects that the person is going to inhale them.

Regarding alternatives to DCM-based paint strippers, there are a number of other chemically-based products that could be used. Most of these have harmful properties. The health effects of alternative products may be less well known than those associated with DCM, which has been widely studied. Some alternatives are detailed in Annex 2. N-Methyl-2-pyrrolidone, for example, is a Category 2 carcinogen (sufficient evidence to presume that exposure may result in the development of cancer), where the sale to consumers is prohibited. In addition, it is believed that many painters and decorators, if unable to purchase DCM-based products, would increasingly resort to mechanical means of stripping paint. These may involve, for example, burning off using blowtorches or heat guns, with the risk of fire and burns, or using a sander which could result in exposure to wood dust or to lead from lead-based paintwork.

The European Commission’s Impact Assessment contained details of 2 fatalities and 4 non-fatal injuries ascribed to the use of paint strippers not containing DCM, although the dates of some of the incidents are not recorded. According to UK-based formulators, DCM currently accounts for 90% of the market in paint-stripping products, and therefore it is likely to account for a greater proportion of injuries and fatalities. It is not known with any certainty that the use of alternatives would reduce significantly the number of fatalities and injuries from paint stripping activities, or how the number of fatal/non-fatal injuries would increase as a result of the increased use of alternatives.

The Health and Safety Executive is currently developing its initial impact assessment. Unfortunately it is not ready to be submitted at this stage. I have asked HSE to update you on progress towards the end of May.

You may find it useful to note that having carried out a most basic review of the European Commission’s impact assessment (using the European Commission’s own figures), HSE estimates that the annual cost to the UK of all fatalities and minor injuries resulting from all consumer, professional and industrial use of DCM based paint strippers is approximately £480k (based on an average of one death every three years and one minor injury every year). However, the cost to the UK of a ban on consumer uses alone would be in the region of £2.3 million to £11 million per annum.

A group of UK DCM-based paint stripper formulators have themselves calculated the cost of a ban on consumer and professional uses to be in the region of £31.6 million to £220.6 million per annum. This does seem very high, and HSE is in dialogue with the group to better understand their methodology.

You will be interested to know that the European Commission’s proposal was presented for the first time to the Council’s Working Party on Technical Harmonisation (Dangerous Substances) at its meeting on 10 April. There was little time for discussion and the dossier will next be considered by the Working Party when it meets on 13 May.

22 April 2008
# Fatalities and Non-fatal Incidents Related to the Use of Dichloromethane since 1989


## Annex 1

### (1) Fatal Incidents

<table>
<thead>
<tr>
<th>Year</th>
<th>Country</th>
<th>Type of user</th>
<th>Number of fatalities</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1989</td>
<td>Germany</td>
<td>Professional</td>
<td>2</td>
<td>Stripping paint from a ceiling; insufficient protection masks, open 25 litre can; poor ventilation (windows and door covered with plastic).</td>
</tr>
<tr>
<td>1989</td>
<td>UK</td>
<td>Industrial</td>
<td>1</td>
<td>58 year old man collapsed in tank in furniture stripping facility. Extraction fan was in place but not operated because of cost to owner. Deceased had consumed a considerable amount of alcohol before the incident.</td>
</tr>
<tr>
<td>1990</td>
<td>France</td>
<td>Professional</td>
<td>1</td>
<td>38 year old painter found dead after applying a stripping gel with hand brush inside a water tower.</td>
</tr>
<tr>
<td>1990</td>
<td>Germany</td>
<td>Professional</td>
<td>1</td>
<td>Painter in a swimming pool, removing chlor-rubber paint by sand blasting. Found dead in pool. Almost empty 10kg container of DCM-based paint stripper found in his car.</td>
</tr>
<tr>
<td>1992</td>
<td>France</td>
<td>Professional</td>
<td>1</td>
<td>55 year old man in charge of applying water tightness product in an indoor swimming pool.</td>
</tr>
<tr>
<td>1993</td>
<td>France</td>
<td>Consumer</td>
<td>1</td>
<td>No details known, but the UK understands that RPA assigned this incident incorrectly, and that it was professional use rather than consumer.</td>
</tr>
<tr>
<td>1997</td>
<td>France</td>
<td>Industrial</td>
<td>1</td>
<td>35 year old paint stripper lying near an open stripping fluid storage (containing 200 litres).</td>
</tr>
<tr>
<td>1999</td>
<td>UK</td>
<td>Industrial</td>
<td>2</td>
<td>Immersing alloy wheels in tanks containing DCM, hydrofluoric acid and methanol. Reaction of aluminium and hydrofluoric acid heated the solution to the boiling point of DCM. No ventilation for removal of solvent vapours released from the tanks apart from natural ventilation created by opening the roller shutters and doors. During night shift operations these were often closed.</td>
</tr>
<tr>
<td>1999</td>
<td>Germany</td>
<td>Professional</td>
<td>1</td>
<td>Stripping in a small bathroom with 80–90% DCM. No personal protective equipment, door closed, window open.</td>
</tr>
<tr>
<td>2000</td>
<td>Germany</td>
<td>Industrial</td>
<td>1</td>
<td>Found dead in car lacquering company following paint removal with DCM without using respiratory protective equipment. Window partly open and electrical fan switched off. Working in a room with an open submersion bath filled with DCM, two filled open buckets and one closed 150 litre barrel of solvent (85% DCM) present.</td>
</tr>
<tr>
<td>2000</td>
<td>Spain</td>
<td>Industrial</td>
<td>1</td>
<td>Work at open dipping tank in a small room with no ventilation except the door. Found slumped over</td>
</tr>
</tbody>
</table>
### Non-Fatal Injuries

<table>
<thead>
<tr>
<th>Year</th>
<th>Country</th>
<th>Type of user</th>
<th>Number affected</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1989</td>
<td>France</td>
<td>Industrial</td>
<td>1</td>
<td>A 31 year old professional paint stripper entered a vat to pick up an object. When coming out he hit his head on the lid. This led to immediate lack of consciousness resulting in a fall into the stripping solution (30 cm deep) consisting mainly of DCM. Discovered with his face submerged in the solution. Loss of consciousness for 36 hours and 2nd degree burns.</td>
</tr>
<tr>
<td>1993</td>
<td>France</td>
<td>Consumer</td>
<td>1</td>
<td>No details available.</td>
</tr>
<tr>
<td>1993</td>
<td>Sweden</td>
<td>Professional</td>
<td>12</td>
<td>High exposure to mainly DCM-containing solvents</td>
</tr>
</tbody>
</table>
### Non-Fatal Injuries by Country:

- France: 6
- Germany: 2
- Sweden: 12
- UK: 22
- **Total:** 42

### Non-Fatal Injuries by User Type:

- Industrial: 6
- Professional: 27
- Industrial/Professional: 2
- Consumer: **7** (HSE believes 1 of these to be professional, not consumer)
- **Total:** 42

<table>
<thead>
<tr>
<th>Year</th>
<th>Country</th>
<th>Type of user</th>
<th>Number affected</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1995</td>
<td>France</td>
<td>Professional</td>
<td>1</td>
<td>Among 12 graffiti removers aged between 18 and 36 working in underground stations. Irritation of upper respiratory tract and eyes. 6 exceeded the Swedish Permissible Exposure Limit.</td>
</tr>
<tr>
<td>1997</td>
<td>France</td>
<td>Industrial/Professional</td>
<td>2</td>
<td>Two men taken to A&amp;E Department suffering from severe intoxication. One fell into a coma; the second did not show signs of initial neurological disorder.</td>
</tr>
<tr>
<td>1997</td>
<td>France</td>
<td>Industrial</td>
<td>1</td>
<td>Same incident as a fatality referred to in first table (35 year old paint stripper). No further details of injury are known.</td>
</tr>
<tr>
<td>1999</td>
<td>Germany</td>
<td>Professional</td>
<td>1</td>
<td>Welding in basement rooms while stripping open staircase. Phosgene poisoning (DCM and open flame). No personal protective equipment worn.</td>
</tr>
<tr>
<td>1999</td>
<td>Germany</td>
<td>Professional</td>
<td>1</td>
<td>Stripping paint from a balcony floor, kneeling over paint stripper.</td>
</tr>
<tr>
<td>1999</td>
<td>UK</td>
<td>Consumer</td>
<td>6</td>
<td>Family of six found semi-unconscious. DIY work in the house thought to be cause of exposure to paint stripper fumes.</td>
</tr>
<tr>
<td>2002</td>
<td>UK</td>
<td>Professional</td>
<td>12</td>
<td>Related to fatal incident where a 34 year old paint stripper was renovating a house. Chemical spillage where a bucket overturned in a basement. 12 people, including police and ambulance staff were taken to hospital as a precaution as they had been exposed to the fumes.</td>
</tr>
<tr>
<td>2006</td>
<td>UK</td>
<td>Industrial</td>
<td>4</td>
<td>Related to fatal incident. Four other people were required to attend hospital as a precaution.</td>
</tr>
</tbody>
</table>
ALTERNATIVE SUBSTANCES TO DICHLOROMETHANE USED FOR PAINT STRIPPING

<table>
<thead>
<tr>
<th>Substance</th>
<th>Hazard Classification</th>
</tr>
</thead>
<tbody>
<tr>
<td>N-Methyl-2-pyrrolidone</td>
<td>Xi: Irritant</td>
</tr>
<tr>
<td></td>
<td>R36/37/38: Irritating to eyes, respiratory system and skin</td>
</tr>
<tr>
<td></td>
<td>Harmful to reproduction Category 2</td>
</tr>
<tr>
<td></td>
<td>R61: May cause harm to the unborn child</td>
</tr>
<tr>
<td>Dibasic esters</td>
<td>Not classified</td>
</tr>
<tr>
<td>Benzyl alcohol</td>
<td>Xn: Harmful</td>
</tr>
<tr>
<td></td>
<td>R20/22: Harmful by inhalation and if swallowed</td>
</tr>
<tr>
<td>Dimethylsulphoxide</td>
<td>Not classified</td>
</tr>
<tr>
<td>1,3-Dioxolane</td>
<td>F: Flammable</td>
</tr>
<tr>
<td></td>
<td>R11: Highly corrosive</td>
</tr>
<tr>
<td>Sodium hydroxide</td>
<td>C: Corrosive</td>
</tr>
<tr>
<td></td>
<td>R35: Causes severe burns</td>
</tr>
</tbody>
</table>

MARKETING AUTHORISATIONS FOR MEDICINAL PRODUCTS (7529/08)

Letter from the Chairman to the Rt Hon Dawn Primarolo MP, Minister of State, Department of Health

Your jointly submitted Explanatory Memorandum was considered by Sub-Committee G at their meeting held on 24 April.

We understand your view that the proposal put forward by the Commission has merit in terms of providing a more robust and effective system for assuring the maintenance of standards of public and animal health protection when existing medicinal products are changed in significant ways.

We welcome also your assessment that the new procedure would reduce the administrative burden, for both businesses and the authorities, of carrying out the procedures needed to provide this assurance. However, it is not clear to us from your EM why this would be the case. Please would you let us have information about the nature of the administrative savings, particularly for businesses, which would arise from implementation of the proposed new change authorisation procedure.

We recognise that detailed plans for implementing the new procedure are soon to be published by the Commission and that, when these are available, you will consult with stakeholders. Please would you write to us with the results of this consultation when your assessment of it has been completed.

We will retain this document under scrutiny and will consider it further when we have received from you the further information we have requested.

24 April 2008

NOVEL FOODS (5431/08)

Letter from the Chairman to the Rt Hon Dawn Primarolo MP, Minister of State, Department of Health

Your Explanatory Memorandum and Supplementary Explanatory Memorandum, respectively dated 1 February and 22 February, were considered by Sub-Committee G at their meeting held on 6 March.

We note that the Commission’s proposal is well supported by the Impact Assessment which accompanies the main Commission document and that the assessment states that stakeholder consultations have underlined the need to develop and up-date the 1997 Regulation.

We note further that the Government welcomes the proposal and that detailed working group discussions on it are in progress which, as yet, have revealed no problems with the Commission’s text.
We, therefore, clear this document from scrutiny and ask you to write to us with the text of the final form of the new Regulation when this is available, outlining your views of the improvements it will make to the existing regulatory arrangements.

7 March 2008

PROMOTING YOUNG PEOPLE’S FULL PARTICIPATION IN EDUCATION, EMPLOYMENT AND SOCIETY (12772/07)

Letter from the Rt Hon Beverley Hughes MP, Minister of State for Children, Young People and Families, Department for Children, Schools and Families

I am pleased to be able to enclose the text of the draft Conclusions (not printed) arising from this Communication which will be considered at the Council on 16 November.

I can confirm that this text is now acceptable to the Government. We had one area of possible concern around references to a joint Declaration with young people that committed the Council to signing up to such a document. These concerns were shared by many other Member States. The text agreed at Coreper is now couched in terms which merely make a factual reference to the Declaration as a suggestion, without committing Member States in any way.

2 November 2007

Letter from the Chairman to Jim Knight MP, Minister of State for Schools and Learners, Department for Children, Schools and Families

Your Explanatory Memorandum dated 25 October 2007, and your follow-up letter together with draft Council Conclusions, were considered by Sub-Committee G at their meeting held on 15 November.

We accept that the Commission’s Communication has much to recommend it and is very much in line with the existing policy direction of the Government. We note, in particular, that you see particular merit in the way in which the Commission link together, across a range of policy domains, the issues facing young people as they approach adulthood.

We welcome the modification to the text of the draft Council Conclusions which now refer to the idea of a joint Declaration between the Commission and young people as just a suggestion which would not commit Member States in any way.

We now clear this Commission document from scrutiny.

16 November 2007

PROMOTION OF HEALTHY DIETS AND PHYSICAL EXERCISE (9838/07)

Letter from the Rt Hon Dawn Primarolo MP, Minister of State, Department of Health, to the Chairman

Thank you for your letter of 16 October 2007 lifting scrutiny of the above proposal and seeking further information on the role that the UK Food Standards Agency (FSA) and the European Food Safety Authority (EFSA) will play in the delivery of the programme of action set out in the Commission’s White Paper on nutrition, obesity and related health matters.

The FSA’s contribution is likely to be in three distinct areas: delivery in the UK or partnership work with industry to help consumers make healthier choices; negotiating on behalf of the UK Government during the development of Community legislation; and helping to share UK experiences and successes with others across Europe.

The White Paper identifies improved consumer information and the reformulation of processed foods as priority areas in which National Governments should work in partnership with industry. This is exactly the model that the UK Government has pursued to date in these areas, and the FSA has led on much of this work, most notably in the development of a front of pack signposting system, and the engagement with industry that has driven salt reductions. This work will continue, and will expand as the FSA takes forward a Saturated Fat and Energy Intake Programme, of which reformulation, portion size and consumer awareness will be key components.


The Commission is expected shortly to publish proposals on Nutrition Labelling, and negotiations continue on the technical annexes to the Nutrition and Health Claims Directive agreed earlier this year. The FSA will represent the UK Government during negotiation on both of these dossiers.

The UK Government will also continue to take opportunities to share with others in Europe our experiences in tackling obesity and diet related diseases, and the many best practice models we have developed. The FSA will again play an important role in this area, one example of which relates to the Commission’s work to establish a Europe-wide salt reduction initiative. I understand that FSA officials have met a number of times with the Commission to share their experience in this area, and the FSA will also provide official support to the UK representative of the High Level Group, when the group discusses the issue.

In comparison to the executive, risk management and risk assessment roles of the UK FSA, the remit of the European Food Safety Authority (EFSA) in relation to nutrition is less broad. However, EFSA will have an important role in assisting and advising risk managers, such as the Commission and European Parliament, in the delivery of the White Paper. For example, it is currently working on the setting of Population Reference Intakes for energy and selected nutrients. In its risk communication role, it intends to provide advice to assist Member States in translating nutrient recommendations into food-based dietary advice that consumers can easily follow. EFSA is also looking at the harmonisation of food consumption data across the EU and has begun work to develop nutrient profiles for foods that will be permitted to bear nutrition and health claims.

6 November 2007

REVIEW OF THE CONSUMER ACQUIS (6307/07)

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


The European Commission published a Green Paper in February 2007, seeking views on a number of options to simplify and modernise existing EU legislation on consumer protection. The Green Paper was the product of a two-year review of eight consumer protection directives (known collectively as the “consumer acquis”), with the stated purpose of meeting the Commission’s Better Regulation goals, by simplifying the existing regulatory framework and boosting consumer confidence in the Single Market.

The eight Directives that are included within this Review cover a wide range of consumer protection issues: doorstep selling, package travel, unfair terms in consumer contracts, timeshare, distance selling contracts, indication of prices, injunctions and the sale of consumer goods and associated guarantees. The Review does not cover all EU consumer protection legislation. Neither the Unfair Commercial Practices Directive (the “UCPD”), nor many provisions aimed at protecting consumers in e-commerce and financial services legislation, are included. The UK Government has therefore argued that there is a need to take other relevant directives into account during the review.

The content of the Green Paper is outlined in Explanatory Memorandum 6307/07.

UK GOVERNMENT RESPONSE TO THE GREEN PAPER

The Government have engaged with the Review at every stage, influencing the drafting of the Green Paper and commissioning academic research on how the Directives had been implemented into UK law, the possible effects of the UCPD and how the Directives could be simplified. The former DTI held three workshops with interested parties (including one at which the Commission introduced the Green Paper), as well as many individual meetings to discuss elements of the consultation paper. Relevant Government departments and bodies (Her Majesty’s Treasury, Ministry of Justice, Office of Fair Trading, Financial Services Authority, the Better Regulation Executive and the devolved administrations) were consulted in the preparation of the UK response.

In its Response, the Government welcomed the broad objectives of the Green Paper which it considered to be developing a clearer set of legal rules in order to boost consumer confidence, protecting consumers and stimulating the Single Market. It highlighted the important links that between this work and the Better Regulation agenda, the ongoing review of the Single Market and the Commission’s “Citizens Agenda”, that focuses on delivering direct benefits to citizens of EU membership.

9 Correspondence with Ministers, 30th Report of Session, 2007–08, HL Paper 184, p 455.
To summarise briefly, the Government argued that the recent UCPD had set out a clearer legal framework for fair trading laws and that a simplified consumer contract framework (contained in a horizontal instrument) could achieve similar gains in terms of simplification and Better Regulation. We also noted that enforcement would be more effective through the specific enforcement and application of broader principles. We suggested that cross-border co-operation on enforcement, with agreed guidelines on how to apply general principles to particular sectors, could be the most effective way of achieving greater consumer welfare. This would be a more radical simplification measure than simply supporting new sector-specific legislation.

In relation to the specific questions in the consultation the Government has supported the “mixed approach” (a cross-cutting “horizontal” instrument supported by “vertical” measures). There should be a focus on simplifying existing provisions, as much as possible, incorporating specific provisions within a horizontal framework, and exploiting links between the UCPD and the consumer acquis. It also supported the application of any “horizontal” instrument to all domestic and cross-border business-to-consumer contracts in order to maintain clarity and improve confidence for consumers and business.

On the politically sensitive issue of whether to support the maximum harmonisation of EU rules, this was supported only where there is a clear barrier to trade or evidence that a regulatory difference is leading to a reduction in consumer confidence. The Government was not convinced however that maximum harmonisation would always deliver the benefits of greater consumer confidence, as for consumers a simple set of guaranteed rights or principles of protection would be more effective than large amounts of detailed legislation. Nor could maximum harmonisation deliver equivalent access as in domestic markets to small claims courts, judicial redress and consumer representation and these would remain inhibitions to a consumer’s ability to seek redress cross-border.

We welcome plans to revise the Timeshare Directive (EM 10686/07 + ADDs 1,2) and also call for a review of the Package Travel Directive, in the light of significant changes to the way in which consumers have booked their holiday and leisure travel, over the last two decades.

Crucially, we have stressed to the Commission that our supportive response is subject to more focused research, including evidence on whether an extension of consumer sales legislation to services and digital content is necessary. The UK strongly urged the Commission to produce a rigorous impact assessment in order to build the evidence base for change and to have due regard to issues of subsidiarity. These concerns were also shared by many of the consumer and business groups who responded to the consultation.

Summary of Responses

I am including a summary of a selection of the responses forwarded to my Department from consumer and business organisations, which I hope will prove useful. I have also included a summary of some of the responses from UK enforcers and legal experts in order to provide a comprehensive overview.

UK consumer bodies (National Consumer Council, Citizens Advice and Which?) largely supported the Review on the basis that a high level of consumer protection was maintained. They supported the “mixed” approach to the structure of the Directives and agreed that the rules should be applicable to all cross-border and domestic consumer contracts, including contracts for digital content.

The National Consumer Council (“NCC”) reiterated the view that the consumer acquis (as defined by the review) does not cover the full body of European consumer law. They cited the exclusion of the Electronic Commerce Directive as a major concern, together with others such as the Data Protection, Unfair Commercial Practices and Consumer Credit Directives. They were attracted to the concept of a general duty of good faith and fair dealing, which would be new to UK consumer law and could allow for a “future-proofed” consumer acquis. They supported the extension of consumer sales provisions to digital products but warned against seeking to include the Sale of Goods Directive within a horizontal instrument given the existing difficulties of implementing sales law into domestic legal systems.

The NCC supported a set of default consumer rights, with an EU-wide application that included a right to replacement or repair if the goods were not in conformity with the contract. An estimated life-span of the goods should also be mandatory if the duration of the guarantee is not indicated. Any costs of meeting the provisions of the guarantee should be borne by the guarantor.

On the issue of maximum harmonisation, the NCC preferred the continuation of minimum harmonisation which established a floor of protection whilst leaving scope for national subsidiarity. They stated that any case for maximum harmonisation must be supported by evidence that protection at a national level would not be reduced.
The NCC argued that the Commission’s ongoing work on a Common Frame of Reference (“CFR”) for general contract law at EU level should not lead to a reduction in the level of consumer protection if consumer contract law was integrated into the wider frame of reference. The CFR had been re-prioritised to focus on the review of the consumer acquis and, consequently, there should be a clear distinction between rules and principles that apply to all contracts and those applicable to either business-to-consumer or business-to-business relationships.

Citizens Advice also supported a “mixed approach” provided that specific rules could be maintained for certain complex markets. They were concerned to see a more joined up consumer regime at EU-level with consumer contract rules that complimented the UCPD, the EU Regulation on Consumer Protection Cooperation, rules on choice of law in consumer contracts, and those directives that fall outside the review. Indeed, they reiterated the importance of understanding how the UCPD would operate in practice before developing similar rules for consumer contracts. They also shared the desire of the NCC to see protection in consumer sales of goods extended to digital content, and services. On the issue of maximum harmonisation, they stated that the Commission would need to ascertain which Member State had best achieved reductions in consumer detriment before setting a standard level across the Community.

A significant area of concern for Citizens Advice was the absence of general remedies for consumers at an EU level. They considered this led to a real deficit in consumer protection and saw no justification for businesses with unfair practices being able to avoid compensating consumers who have suffered detriment. They also highlighted the importance of effective enforcement and the need to ensure that any new horizontal instrument should fall within the ambit of the EU Injunctions Directive.

Which? also raised very strong concerns about the possibility of maximum harmonisation, stating that this approach would be a threat to consumers in countries which had the highest levels of consumer protection. They suggested that such an approach would lack the flexibility to deal with changing consumer markets and shared our concerns that more evidence and focused research was needed to support the Commission’s approach. In the area of enforcement and redress, Which? expressed interest in the model suggested in our consultation response which attempted to draw a framework between the UCPD and the consumer acquis. They also highlighted the Commission’s expression of interest in developing collective redress actions, which they supported further work on. Which? supported a greater focus on after-sales service for consumers, which they considered to be a major area of concern for consumers when contemplating possible cross-border transactions.

In summary, UK business organisations (British Retail Consortium and the Confederation of British Industry) largely supported the aims of modernising the current regulatory framework in accordance with Better Regulation principles. Both organisations stressed the importance of competitive markets and strong levels of innovation as key drivers for improving consumer welfare, as well as clear and consistent contractual rights. They both supported a horizontal Directive in order to achieve consistent definitions and approaches, with vertical chapters as necessary. There was agreement that the rules should apply to both domestic and cross-border transactions. They supported a fully harmonised Directive as this would provide a single set of rules throughout the EU, but the harmonisation should be based on the current levels of protection. Business stressed the importance of education as a vital means of empowering consumers stressing that consumers, as well as business have responsibilities to exercise informed choices prudently.

The Confederation of British Industry (“CBI”) also stressed a need for a modernised, principles-based regulatory framework that built on the approach set out in the UCPD. Like the UK Government, they urged the Commission to ensure that the review was in line with the forthcoming review of the Single Market. The CBI said attention should be paid to the way in which technological advances impact on how businesses operate, as well as the way in which consumers behave; for example, how the internet has empowered consumers. The CBI also expressed a preference for a unified package of changes that settled the regulatory framework for some time to come. They criticised the process leading up to the publication of the Green Paper suggesting that it would have been more logical to have completed all the transposition reports on the directives before publishing the Green Paper. The CBI expressed serious concerns about whether the review might result in an increase in the level of consumer protection in the UK, without clear evidence of a need for it. They urged the Commission to produce a White Paper supported by a full and detailed impact assessment of the policy option settled upon by the Commission.

The Confederation of British Industry agreed that the work on the Common Frame of Reference had been helpful in the review of the consumer acquis, but that the CFR should not be used as a basis for the development of a European civil code.

Unlike the CBI who urged the Commission to restrict their attention to the eight directives contained within the consumer acquis, the British Retail Consortium (“BRC”) urged the Commission to conduct a wider ranging review. The BRC considered that the Commission should investigate whether other Community
directives or regulations would be affected by a horizontal instrument and whether these other elements should be brought within the remit of the review. They questioned why other legislation that fell outside the responsibility of the consumer protection Directorate (DG SANCO) was not included. The BRC encouraged the Commission to be more collegiate in its working practices in order to avoid conflicting proposals and inconsistency.

The BRC suggested that in order to future-proof the consumer acquis, a general clause based on professional due diligence (aligned with the current duty of fairness in the unfair consumer contracts directive), might be a more viable alternative to a general clause of good faith.

Two enforcer bodies forwarded their responses to the Department. The Office of Fair Trading (“OFT”) emphasised taking a long term view of consumer markets in a framework that had the necessary flexibility to respond to developments and new products. OFT stressed that the introduction of the UCPD would duplicate some measures contained in the consumer acquis and a simplification of existing rules should iron these out to avoid unnecessary burdens for business. The OFT generally favoured maximum harmonisation provided that the current levels of consumer protection are maintained and supported removing some of the differences within the consumer acquis; for example, in cancellation rights, where cooling-off periods differ. They stressed consistency in definitions of terms across the consumer acquis and also highlighted the need for revision of the Timeshare and Package Travel Directives. OFT argued that the growth of the internet auction market had highlighted the need for changes to the Distance Selling Directive.

The Trading Standards Institute (“TSI”) stressed that UK sale of goods legislation went further than that provided for in the relevant EC Directive. TSI urged the Commission to maintain the right of each Member State to go further than the basic EU protections and was therefore against maximum harmonisation. TSI strongly supported greater clarification of definitions, especially where a ‘consumer’ buys goods for both personal and business use and the need for a definition of delivery; a vital concept in the context of the sale of goods.

From the responses of legal experts, the Consumer Law Academic Network, Society of Legal Scholars and the Northern Commercial Law Group (in their joint response) noted their disappointment with the substance of the Green Paper. They felt this should have been an opportunity for a more fundamental debate about the purpose of European consumer law, rather than a range of detailed policy options. They stressed the importance of factors, other than legal fragmentation, as significant deterrents in shopping cross-border (such as linguistic and cultural barriers). They questioned whether a new Directive would achieve consistent rules given that directives depend on correct implementation for their effectiveness and that national implementing legislation would almost certainly continue to vary. They suggested that a directly applicable EU Regulation might therefore be a more appropriate tool for achieving consistency. They also questioned whether the Commission had made a sufficiently strong case for intervention on the internal market imperative and therefore whether the use of Article 95 as the legal basis for adoption of any new directive would be appropriate. They suggested that other legal bases other than Article 95 should be considered.

The Bar Council of Great Britain suggested that the recent experience of the Consumer Credit Directive had exposed the difficulty of producing a workable instrument applying maximum harmonisation. They addressed the issue raised by the Commission of introducing a general principle of good faith, echoing concerns made by the Government that it was difficult to address the Commission’s proposal without a clear idea of how the term would be employed by different Member States.

The Law Society was one of the only UK respondents to disagree with a mixed approach, favouring instead the retention and the revision of the existing directives. The Law Society favoured urgent action in areas where consumers were suffering detriment (for example, in the revision of the Package Travel Directive). Rather than focusing on a horizontal instrument within the consumer acquis, they favoured this work taking place within the context of the Common Frame of Reference.

**Timetable**

The European Commission published a summary of the responses to the Green Paper in October. The Commission intend to bring forward a legislative proposal in late 2008. The revised Timeshare Directive is being discussed in Council Working Groups under the Portuguese Presidency and a working document on package travel, package holidays and package tours was published by the Commission on 13 August 2007. A similar working document has been published on the Door-step Selling Directive. The Second Progress Report on the Common Frame of Reference was published on the 25 July 2007, and details the results of the workshops on issues relevant to consumer contracts.
I hope that this has proved a useful summary of the responses and a helpful update on progress in this area. I will write to you when we have further clarification of how the Commission intend to take forward this work.

22 November 2007

Letter from the Chairman to Gareth Thomas MP

Your letter dated 22 November was considered by Sub-Committee G at its meeting held on 6 December 2007. Thank you for sending us a copy of the Government’s submission to the Commission’s Green Paper Review of the Consumer Acquis, and for your helpful letter summarising this response and the views about the Green Paper which UK stakeholders have put to you.

We welcome the fact that in your submission to the Commission you have made very clear the point that the Government supports harmonisation only where there is a clear barrier to trade or evidence that a regulatory difference is leading to a reduction in consumer confidence.

We understand that the Commission will bring forward a legislative proposal in late 2008, which we will consider in the light of the Explanatory Memorandum that you send us about this. In the case of the proposed revised Timeshare directive, which comes under the banner of the acquis, we are in the process of completing our Inquiry Report and hope to publish this during December.

We now clear this document from scrutiny.

7 December 2007

SAFETY OF TOYS (5938/08)

Letter from the Chairman to Gareth Thomas MP, Parliamentary Under Secretary of State, Department For Business, Enterprise and Regulatory Reform

Your Explanatory Memorandum was considered by Sub-Committee G at their meeting held on 20 March. We understand that, during the past 20 years, the UK and EU markets for toys have functioned smoothly against the background of the existing 1988 Directive. However, we accept your view that during this period experience has been gained about the way in which the 1988 Directive has operated, and that the Commission’s proposal to revise it is sensible.

We understand also that there is a lot of ground to be covered in Council working groups before the proposal is finalised, and we welcome your intention, when that work has been completed, to prepare a full UK impact assessment.

We will retain this document under scrutiny and will consider the issues it raises further when you write to us again sending your assessment of the final form of the proposal and your impact assessment of this.


SCHOOLS FOR THE 21ST CENTURY (11808/07)

Letter from Jim Knight MP, Minister of State for Schools and Learners, Department for Children, Schools and Families to the Chairman

I am pleased to enclose a copy of the Government’s responses to the Commission consultation “Schools for the 21st Century”. The Commission revised their deadline for responses to 15 December so allowing us more time to co-ordinate replies. DCSF has responded on behalf of England and Northern Ireland. Wales and Scotland have responded separately.

You asked for my analysis as to how each of the questions is directed at achieving clear Community competences. The consultation invites response to the eight questions according to national contexts and also according to how European cooperation can support Member States. In framing the questions within these parameters, and making the distinction between national and European action, I believe that Community competences are respected. Each of the questions deal with different aspects of schools policy, and the information provided will assist the Commission in identifying key issues and trends. This could provide an input into the EU processes we have established of mobility, peer learning, statistical analysis and sharing good practice. The Government responses are very clear that the content of teaching and organisation of education systems remain a responsibility of Member States.
We believe this approach is supported by the majority of other Member States. We will pursue this view when we discuss the results of the consultation with our partners and the Commission in 2008.

12 December 2007.

ANNEX

“SCHOOLS FOR THE 21ST CENTURY”: GOVERNMENT RESPONSE COVERING ENGLAND AND NORTHERN IRELAND

Part 1: Actions necessary within national contexts to ensure that schools deliver the quality of education needed in the 21st century

The Department for Children, Schools and Families is engaged in a significant reform programme for schools in England. Proposals to achieve a world class education system in England were set out in the White Paper Higher Standards, Better Schools for All (October 2005) and the Children’s Plan (December 2008). The Education and Inspections Act 2006 gives legal force to many of the proposals in the White Paper.

In Northern Ireland, the Education (NI) Order 2006 gave effect to a revised curriculum and Entitlement Framework (to guarantee pupils access to a wider range of general and applied courses at age 14+). This is part of programme of educational reform intended to raise standards.

Northern Ireland is also finalising a review of its school improvement policy. This review highlighted a gap in performance between the top performing schools and those that perform less well. The review has identified key principles on which to base a new school improvement policy. These include a strong focus on pupils as individuals; on school accountability and self-evaluation; the effective use of data; and effective leadership at all levels within a school. Proposals for a revised policy will be detailed in a consultation document entitled, “Every School a Good School” which will issue for consultation in early 2008. To complement this, a review of Literacy and Numeracy Strategy will also issue for consultation in early 2008.

(1) How can schools be organised in such away as to provide all students with the full range of key competencies?

The reforms being carried out through DGSF focus on the following key themes:

— ensuring that education is tailored to meet the needs of every child;
— fully engaging parents in their child’s learning;
— enabling parents to influence the development of a more dynamic school system, offering greater choice and diversity;
— positioning local authorities as strategic commissioners and decision makers, ensuring high standards and fair access; and
— making it easier for schools, supported by external partners, to become responsible managers of their own affairs, collaborating and innovating to help every child reach their potential.

The Government aims to combine limited national prescription (e.g. around buildings, teachers and funding) with considerable local flexibility, because local areas know best what challenges lie ahead and what works for them. Local authorities are taking a new strategic role and are responsible for promoting choice and diversity; responding to parental concerns about the quality of schools; intervening early to prevent schools failing and taking rapid action with failing schools which do not improve; and making decisions about school organisation issues.

Other types of schools operate as part of the state sector. Foundation and Trust schools are run by their own governing body, which employs the staff and sets the admissions criteria. Trust schools form a charitable trust with an outside partner—for example, a business or educational charity—aiming to raise standards and explore new ways of working. Academies are independently managed, all-ability schools set up by sponsors from business, faith or voluntary groups in partnership with the DCSF and the local authority. Together they fund the land and buildings, with the government covering the running costs.

(2) How can schools equip young people with the competencies and motivation to make learning a lifelong activity?

14–19 reforms introduced in England are aimed at giving young people the opportunity to choose a mix of learning which gives them the knowledge, skills and attitude they need to succeed in education, work, and life. The reforms include:

— A greater focus on functional skills needed for everyday life, demonstrated through real life application.
— **Stronger vocational routes**, where young people develop through practical experience, with qualifications that give them the broad education to progress further in learning as well as into employment.

— **More stretching options** on both general and applied activities which extend young people. These are backed by greater choice for young people to advance quickly through the system, or if they need to take longer, in order to achieve higher standards.

— **New action for pupils who do not come to school** and to ensure that those in danger of dropping out can be motivated to stay in learning. Resources are directed at those schools with the highest levels of persistent absence. Our approach is one of early intervention by schools to prevent pupils becoming persistent absentees. Each case is addressed according to the pupils’ individual needs and the underlying causes of their absence are targeted through the appropriate agencies, including legal action if required.

The revised curriculum in Northern Ireland has a greater emphasis on developing the skills and competences young people need for life and work. It provides greater flexibility to enable schools to tailor provision to best meet the needs of their pupils and to provide for greater pupil choice over the courses they follow from age 14 onwards.

(3) **How can school systems contribute to supporting long-term sustainable economic growth in Europe?**

Governments need to anticipate future labour market demand for skilled workers. An economy must compete on high-quality skills if it is to contribute to Europe’s competitive edge. The Leitch review in the UK acknowledged that we face a stiff challenge in improving skills and this challenge is shared by many other countries.

We must ensure that young people have the right mix of skills as Europe moves towards a high-skills economy. Functional skills are essential and we must ensure that all young people master English, Maths and computer skills at a level that is appropriate to their ability and aspirations. It is important that schools provide pupils with the right underlying skills to prepare them for further/higher education or employment.

Furthermore, schools should reflect the principles of sustainable development in teaching the curriculum and by demonstrating these principles e.g. through transport, food and buildings.

(4) **How can school systems best respond to the need to promote equality, to respond to cultural diversity and to reduce early school leaving age?**

To make significant progress on narrowing the gap in standards, Government needs to tackle the multiple needs of the bottom 20% of children. The recently published Children’s Plan is based on the following key principles:

— All children have the potential to succeed and the next stage of reform in England will focus on the needs of the particular child.

— Government will work with families and communities, enabling parents to do the best for their children.

— Early intervention from those working with children is needed to prevent failure.

— Joined-up services need to be shaped by and be responsive to children.

— Childhood is not just preparation for adult life: it needs to be enjoyed.

Key policies underpinning the Children’s Plan include:

*Early Years:* Expand the free of offer of a place to disadvantage two-year-olds and drive up quality by improving opportunities for Continuing Professional Development and increasing numbers of graduates entering the profession.

*Curriculum:* A wide-ranging, independent Primary Curriculum Review to smooth transitions from early years, free up space and enhance focus on literacy and numeracy.

*Personalisation:* Pilot the use of single level tests and testing when ready (subject to successful piloting) and drive further adoption of Assessment for learning and the use of keep up and catch up interventions.

*Play and positive activities:* Invest in play facilities, trial supervised play parks for 8-13s and bring investment in youth facilities forward.

The Government is also consulting on proposals requiring young people to stay in education or training to age 18.
(5) If schools are to respond to each pupil’s individual learning needs, what can be done as regards curricula, school organisation and the roles of teachers?

In England funding is provided for every pupil to have access to a single member of staff who is able to coordinate a package of support that best helps that pupil. An average of ten hours of one-to-one teacher-led tuition for pupils falling behind their peers is provided in English and mathematics, combined with a wider range of small group tuition. Schools can also offer more stretching lessons and opportunities for gifted and talented pupils, and develop opportunities to learn beyond the formal school day.

A collection of individual pupil level data has enabled schools to track the progress of individual pupils through the education system. A pilot on improving the progress children and young people make in education has been developed. This will include progression targets for schools to increase pupil attainment; one-to-one tuition for pupils who were below national expectations at ages seven and eleven, and are still making slow progress; and an incentive payment to schools to improve the proportion of pupils making two levels of progress in level by level tests.

Excellence Hubs in each region provide a range of out-of-hours opportunities for gifted and talented learners. Each Hub is led by a higher education institution that works in collaboration with schools. Hubs will prioritise the needs of gifted and talented learners from disadvantaged backgrounds. Plans are underway to introduce a student academy that will meet the needs of gifted and talented learners from primary and secondary schools. Training for teachers is also under development, with the aim of securing one trained leading teacher per secondary school and one per group of primary schools.

(6) How can school communities help to prepare young people to be responsible citizens in line with fundamental values such as peace and tolerance of diversity?


In primary schools citizenship is part of a framework for Citizenship and Personal Social and Health Education (PSHE). Citizenship education addresses issues relating to social justice, discrimination, human rights, community cohesion and global interdependence, and encourages respect for different national, religious and ethnic identities. Pupils also learn about democracy and justice and the role of global organisations. From September 2008 a new element entitled “Identity and Diversity: Living Together in the UK” will be introduced into the secondary curriculum.

(7) How can school staff be trained and supported to meet the challenges they face?

Teaching is a highly skilled, high status occupation. The best teachers constantly seek to improve and develop their skills and subject knowledge. To help fulfill our high ambitions for all children, and to boost the status of teaching still further, the Government now wants it to become a masters-level profession, by working with the social partnership to introduce a new qualification, building on the recently agreed performance management measures.

To ensure the best possible quality of teaching in all schools, the Government has already taken steps to ensure that every teacher will now be engaged in high quality performance management linked to continued practical professional development from when they first start teaching. The new goal will be for all teachers to achieve a Masters qualification as a result over the course of their career. This will represent a step change for the profession that will bring us in line with the highest performing education systems in the world. All new recruits should thus benefit from a more structured approach to their early professional development. This will help them to develop more effectively the classroom skills they need such as assessment for learning and recognising and responding to children and families with special needs.

Currently, the UK offers a range of diverse routes to qualified teacher status, including employment-based programmes. In addition, pre-initial teacher training (ITT) courses are available for those wishing to enter teaching and have related qualifications and experience. Programmes are also available for those who wish to return to teaching, focusing on updating skills and knowledge, and increasing confidence to return to the classroom environment. ITT is seen as the starting point of continuing professional development for teachers. The teacher training agency supports professional and occupational standards, performance management arrangements, and stimulation of high quality in-service training.

Funding is available for the priority training for support staff, such as that leading to the award of HLTA status (higher level teaching assistant), as well as courses in school business management. We are working to develop a qualifications strategy for the wider workforce that will recommend future standards and their associated training and development needs.
(8) How can school communities best receive the leadership and motivation they need to succeed? How can they be empowered to develop in response to changing needs and demands?

A re-designed National Professional Qualification for Headship is due in September 2008, together with a Fast Track leadership programme to help participants reach senior positions within five years. A Future Leaders programme aims to develop Middle Leaders and high quality individuals who are currently not in the schools teaching system, who would like to become Heads, Deputy Heads and Assistant Heads in urban areas.

Part 2: identify those aspects of school education on which cooperation at EU level could help support Member States in the modernisation of their systems

Given the enormous diversity in culture, structure and priorities within and between Member States, it is important that the content of teaching and organisation of education systems remain a responsibility of Member States.

The areas where the EU can make a valuable contribution include enabling peer learning and networking and facilitating mobility. The established policy peer learning clusters should continue, with the inclusion, where possible, of input from practitioners in the field. It is important that the EU ensures that results of peer learning are disseminated effectively and that a wide range of users have the opportunity to benefit from them.

The Lifelong Learning Programme provides a vital platform for enabling children, young people, teachers and non-teachers to come together to learn across structural and national boundaries. The focus should be on continuing to encourage greater participation in the programme and simplifying the bureaucratic processes. The Commission could also consider extending such programmes to 3rd countries, although it would be important to ensure that EU action provided added value in comparison to bilateral exchanges.

The Commission also has an important role in sharing key messages from international surveys and facilitating the exchange of information between Member States and the leading OECD countries. However, benchmarking and target-setting for the Union as a whole should not dominate at the expense of local solutions to local issues.

Letter from the Chairman to Jim Knight MP

Your letter dated 12 December was considered by Sub-Committee G at its meeting held on 10 January 2008.

We note your argument that the answers to the questions included in the Commission’s consultation document will provide information for input to EU processes already established relating to: mobility; peer learning; statistical analysis and sharing good practice.

However, we had hoped to see the Government’s analysis of how each of the questions related to Community competence. In the absence of this more detailed information, we continue to doubt that an appropriate delineation between the role of the Community and the role of Member States, in line with Treaty Article 149, will be reflected in the Commission’s future proposals.

We trust that, when you provide us with an Explanatory Memorandum covering the forthcoming Commission Communication on this subject, you will provide us with a much more detailed explanation of how each key element of the proposals conforms to the Community’s competence under Article 149 “to contribute the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action.”

Complementing this information, we would also like to see in the EM an explanation, again relating to Article 149, of how each of the key elements of the proposals “fully respects the responsibility of Member States for the content and organisation of education systems and their cultural and linguistic diversity”.

While we still have concerns about the issue of Community competence, and will return to this subject when the Commission’s Communication is deposited later this year, we now see little purpose in continuing to hold the present Commission Staff Working Document under scrutiny, and we therefore clear it.

10 January 2008
SLOVENIAN PRESIDENCY: EDUCATION AND TRAINING

Letter from Bill Rammell MP, Minister of State for Lifelong Learning, Further and Higher Education, Department for Innovation, Universities and Skills to the Chairman

I am writing to outline the prospects for the EU Slovenian Presidency in the fields of Education and Training. The three key priorities for the Presidency are:

1. Strengthening the role of education and training in the revised Lisbon strategy:
2. Promoting creativity and innovation:
3. Promoting intercultural dialogue and multilingualism, since 2008 is the European Year of Intercultural Dialogue.

The first Education Council of the Presidency, on 14 February, will focus on strengthening the role of education and training in the Lisbon strategy. The Council will debate and adopt Key Messages to send to the Spring European Council, in which the UK has pushed for a focus on skills (including the proposal for a European Skills Review) and higher education, particularly increased autonomy and the diversification of sources of funding. The Council will also adopt the Joint (Council/Commission) Report on progress in implementing the Education and Training 2010 work programme, which is based on National Reports and details the progress made against the five EU benchmarks.

As part of the priority to promote creativity and innovation, the Presidency will hold a Conference entitled ‘Promoting creativity and innovation: schools’ response to the challenges of future societies’. To promote intercultural dialogue and multilingualism, a Ministerial Conference on Multilingualism is scheduled for 15 February.

These priorities and others will be taken forward further at the second Council, on 21–22 May, where the dossiers below will be covered:

Promoting creativity and innovation in school education and training: Following the conference on the same subject and the Commission’s public consultation on “schools for the 21st century”, there will be an exchange of views and the adoption of Council Conclusions.

2009: European Year of Creativity and Innovation: A decision is required to establish 2009 as the Year of Creativity and Innovation, and the Presidency are aiming for a General Approach or Political agreement at the Council in May.

Council Conclusions on Adult Learning: These Council Conclusions follow on from the Commission’s Action Plan, published in October 2007. They aim to help strengthen the adult learning sector across Europe, focusing largely on those who are disadvantaged because of low literacy levels, inadequate work skills and/or skills for successful integration into society. This is an important issue for the UK, and could be linked to the broader EU skills agenda.

Erasmus Mundus: The Council agreed a General Approach in November 2007 on the next stage of this programme (2009-2013), which promotes EU cooperation with third countries in Higher Education. The Education Council will consider any amendments from the European Parliament and will seek to reach political agreement.

European Training Foundation (ETF): Political agreement will be sought on this proposal which amends the founding Regulation of the European Training Foundation, in order to update its role and function and to provide a sound basis for its future work.

European Credit System for Vocational Education and Training (ECVET): A draft of this Recommendation will be published by the Commission in March, and a General Approach sought in May. The Recommendation proposes to establish a framework that can be used to describe vocational qualifications in terms of transferable units and learning outcomes, in order to help promote mobility.

Quality Assurance in Vocational Education and Training: As a tool to support Member States’ systems at EU level, the Commission intends to propose a Recommendation in March on a framework of principles and criteria for Quality Assurance in Vocational Education and Training.

In Higher Education, outside the formal work of the Presidency, areas to take forward include the Compendium of Good Practice, the launching of the Commission’s University-business forum, and thinking around further development of the Erasmus programme, which is likely to be a theme of the French Presidency.

7 February 2008
SLOVENIAN PRESIDENCY: HEALTH PRIORITIES

Letter from Rt Hon Dawn Primarolo MP, Minister of State, Department of Health to the Chairman

I am writing to give you an overview of expected EU activity in the area of health and pharmaceuticals in the first of 2008, including the priorities of the Slovenian Presidency. I hope this will assist you in planning the course of your scrutiny business.

The Slovenians have chosen cancer as their main Presidency theme in the area of health. Activities in this area included a conference entitled ‘The Burden of Cancer—How it can be reduced’, held on 7–8 February, which took a broad approach with discussions on topics including prevention, screening, treatment and research. In addition, the Commission is expected to publish a report on the implementation of the Council recommendation of December 2003 on cancer screening during the Slovenian Presidency.

The Commission have indicated that they still intend to adopt the proposal for a Directive on Cross-border Healthcare during the Slovenian Presidency. The Presidency will also take forward work on the implementation of the EU Health Strategy, published last year and sent to the Committee under cover of the explanatory memorandum dated 25 October 2007.

The Slovenian Presidency has also identified antimicrobial resistance as a priority, with proposals for work into research and development of new drugs to combat rising levels of resistance. Work will also continue at official level on implementation of the EU strategy on reducing alcohol related harm, with the third EU Alcohol Policy Conference taking place on 2 April.

In Pharmaceuticals, the Presidency intends to progress legislative dossiers including the proposals on colouring matters added to medicinal products and variations to marketing authorisations.

Finally, the Slovenian Presidency will host the informal meeting of EU Ministers for Health in Slovenia on 17–18 April, and the Employment, Social Policy, Health and Consumer Affairs Council (EPSCO) will meet in Luxembourg on 9 and 10 June, with health items likely to be taken on 10 June. Once a formal agenda for the EPSCO Council has been announced, I will write to you again with an update of the health items to be discussed.

19 February 2008

STATISTICS ON PUBLIC HEALTH AND HEALTH AND SAFETY AT WORK (6622/07, 9823/08)

Letter from Angela Eagle MP, Exchequer Secretary, HM Treasury to the Chairman

Thank you for your helpful letter of 25 October 2007. You asked me to write to you again following the European Parliament’s first reading of this proposal on 13 November. The EP gave general support to the Commission’s proposal, and passed minor amendments intended mainly to:

— ensure sufficient collection of data on gender differences in the relevant subject areas;
— ensure co-ordination with initiatives from other international bodies; and
— clarify the availability of Community funding for implementation.

However, the deliberations of the EP and the Council on this proposal are now somewhat out of step. The EP supported the Commission’s proposal in its original form, subject to the amendments mentioned above. Meanwhile, the Council’s Working Party on Statistics has already agreed substantial alterations to the original proposal, along the lines referred to in my previous letter. At its meeting on 30 November the Working Party did not reach final agreement on the latest Presidency compromise text. The main issue outstanding is the possible inclusion of specific references to the European Safety at Work (ESAW) statistical methodology, designed to ensure that future mandatory requirements in that field cannot exceed what is already in place under the voluntary ‘gentlemen’s agreements’. This inclusion is in line with the Government’s views, as set out in the Explanatory Memorandum.

It is likely that discussion in the Working Party will therefore not be completed until early in 2008. Because of the differences between the text approved by the EP and the version which will eventually be agreed by the Council, a second reading by the EP will then be required. I will write to you again about the final form of the regulation and the timing of its full agreement, in due course.

4 December 2007

SUSTAINABLE AND COMPETITIVE EUROPEAN TOURISM (14248/07)

Letter from the Chairman to the Rt Hon Margaret Hodge MP, Minister for Culture, Creative Industries and Tourism, Department for Culture, Media and Sport

Your Explanatory Memorandum dated 6 November, together with Draft Council Conclusions, was considered by Sub-Committee G at their meeting held on 22 November.

We notified your Department by telephone straight away that we had cleared the document from scrutiny, and we trust that this information reached the Minister—representing the UK at the Competitiveness Council meeting of 22 and 23 November—before the item came up for discussion on the agenda of that meeting.

However, while we recognise that EC Treaty Article 3(u) does provide that the activity of the Community shall include “measures in the spheres of energy, civil protection and tourism”, we are most uneasy about the scale of Community engagement which is reflected in the Commission’s proposals set out in the Communication.

We see the tourism industry as an area of commercial enterprise in which individual Member States need to establish, to the degree that suits their own circumstances, the extent to which the activities of the industry are supported by government intervention or are constrained by the social and environmental aims of the Member State. We are not convinced that a framework of this kind, covering the European Union as a whole, is desirable.

We would therefore find it helpful to learn of your views about the need for an EU level role in relation to the tourism industry, and we ask you to write to us setting these out.

29 November 2007

Letter from the Rt Hon Margaret Hodge MP to the Chairman

Thank you for your letter of 29 November seeking my views on the need for a EU role in relation to the tourism industry.

I am grateful to you for notifying my department so promptly of your decision to clear from scrutiny the above Communication. My officials were most grateful for your assistance, especially given the tight deadlines under which they were working. They notified BERR, lead Department for EU Competitiveness issues, straight away and on time for the Competitiveness Council meeting of the 22 and 23 of November.

You might be interested to know that the Council Conclusions on this agenda item were adopted without debate.

In your letter, you express concerns about the Commission’s proposals set out in the Communication. I understand these concerns, especially in view of the new Tourism competence that will be introduced in the forthcoming Reform Treaty.

My department has held a longstanding view that there is no need for a competence in the field of tourism. The concern has been that it could lead to more but not necessarily effective activity in this field. However there was no strong reason to object to its inclusion within the context of the wider government negotiating priorities.

With regard to the proposals set out in the Communication and the report to which it refers (‘Action for more sustainable European Tourism’), I consider the Communication to be in line with UK sustainable tourism development policies. The UK is a member of the Tourism Sustainability Group (TSG), and we have supported its work and its report in our recently launched tourism strategy: ‘Winning: A Tourism Strategy for 2012 and beyond’.

I agree with your comments on the need for Member States to establish their own policy and regulatory environment to suit and develop their own tourism sector. The Commission, in its Communication, also acknowledges this point and recognises the voluntary nature of stakeholder’s engagement with the process: “The tourism sector involves many different private and public stakeholders with decentralised competencies. It is therefore of major importance to respect the principle of subsidiarity and to work with a bottom-up approach, involving those stakeholders who have the competence and power to act and who are voluntary contributing to the implementation of the Agenda” (Page 6, bullet 3).

We had initial concerns, echoed by other Member States, about the potential reporting demands that the Commission could impose. The Communication proposes the use of current annual reporting mechanisms through the Tourism Advisory Committee and the revision of the Tourism Statistics Directive. We are engaged in the revision and it is currently making progress. The relevant paragraphs in the Communication are as follows:
“In order to strengthen the collaboration with and among Member States, their current annual reporting through the Tourism Advisory Committee (TAC) will be used to facilitate the exchange and the dissemination of information also about how their policies and actions safeguard the sustainability of tourism” (Page 8, bullet 3.2.1, paragraph 6).

“The need to know better and faster how tourism evolves in Europe can be addressed partly through the collection and provision of statistical and geographic data. For instance through the revision of the Tourism Statistics directive and/or through GMES (Global Monitoring of Environment and Security) delivering Europe-wide uniform geospatial information services, and partly through the activity of existing or new observatories” Page 9, bullet 3.2.1, paragraph 7).

Having taken further legal advice, we are confident that the new competence within the Reform Treaty excludes any harmonisation of national laws.

If it would be helpful for me to provide further details, do not hesitate to contact my officials.

19 December 2007

TACKLING THE PAY GAP BETWEEN WOMEN AND MEN (12169/07)

Letter from Harriet Harman MP, Minister for Women and Equality, Government Equalities Office, to the Chairman

Thank you for your letter of 25 October 2007 to Hazel Blears MP regarding the Explanatory Memorandum on the Commission’s Communication on tackling the pay gap between women and men. I am replying, following the transfer of these responsibilities to me on 12 October.

I would like to respond to the Committee’s request for an assessment of the implications for UK policy of the relatively poor pay gap position in the UK compared with the EU average in 2005, as calculated by the EU.

Firstly, I think it is important to highlight that the figures from the UK’s Annual Survey of Hours and Earnings indicate that the gender pay gap stood at 17.1% in 2005 (using the mean figure). The median figure in 2005 was 13.0% and in 2006 it stood at 12.6%.

The Commission has used the Eurostat Statistics which are internationally comparable data based on the Statistics of Income and Living Conditions. The UK, on the other hand, uses the Office of National Statistics figure which is based on the Annual Survey of Hours and Earnings and relates specifically to the UK.

The EU definition includes “normal overtime” payments, whereas the UK definition does not. As men tend to earn more overtime than women, this factor would tend to increase the size of the EU gender pay gap figure in relation to the UK figure.

The EU also includes in its target population employees that are at work for 15 or more hours per week. The UK definition for the full-time gender pay gap includes employees working more than 30 paid hours per week, or those in teaching professions who work more than 25 paid hours per week. Therefore a lot of people who under the UK definition would be classed as part-time workers would be included in the EU figure. As the part-time gender pay gap in the UK is much higher than the full-time one, this difference would again lead to the EU’s method of calculation making the UK pay gap appear higher.

The use of different data sources to measure progress across Member States by EU institutions can distort the full picture, and it is important that we look to use similar data wherever possible. In fact, the Parliamentary Under Secretary of State for Equalities raised this very point with Commissioner Vladimír Špidla, member of the European Commission responsible for employment, social affairs and equal opportunities when she met with him on 29 October, to discuss issues such as the importance of tackling the pay gap and pension reform.

However, I would like to assure you that closing the pay gap between men and women remains a key activity and I was determined to focus on this issue when I published my priorities in July 2007. We see it as an essential part of enabling families to have real choices about how they live their lives because the pay gap plays such a large part in the unequal division of labour in the home, preventing fathers from playing a more active role in their children’s early years and preventing women from fulfilling their opportunities to work. To add impetus to this work, closing the pay gap is now one of the indicators in the new Equalities Public Service Agreement.

12 November 2007

12 Correspondence with Ministers, 11th report of Session 2008–09, HL Paper 92, p 351.
TOGETHER FOR HEALTH: A STRATEGIC APPROACH FOR THE EU 2008–13 (14689/07)

Letter from the Chairman to the Rt Hon Dawn Primarolo MP, Minister of State,
Department of Health

Your Explanatory Memorandum (EM) on the above White Paper was considered by Sub-Committee G at its meeting of 22 November 2007.

We welcome the broad thrust of the White Paper and we agree with the Government that proposals for action must be examined on their own merits as they come forward.

We support your own reservations as regards the international role of the EU and subsidiarity concerns. In connection with the latter point, we consider that information is required in particular on the Structured Cooperation implementation mechanism. We also have grave concerns about the apparent tendency of the Commission’s proposals to extend the Community’s involvement in the field of health policy outside the boundaries of what is clearly within its competence.

We are content to release the White Paper from scrutiny and we would welcome any information that you may have from the Commission on the Structured Cooperation implementation mechanism.

22 November 2007

Letter from Rt Hon Dawn Primarolo MP to the Chairman

I am writing in response to your letter of 22 November 2007 requesting further information on this dossier.

Firstly, you asked for more information on the Structured Cooperation implementation mechanism. As the Explanatory Memorandum set out, the Health Strategy foresees the creation of a new Committee whose aim will be to implement the objective and principles set out in the Strategy through advising the Commission and promoting coordination between the Member States.

This cooperation mechanism will assist the Commission in identifying priorities, defining indicators, producing guidelines and recommendations, fostering exchange of good practice, and measuring progress. It will also provide opportunities for local and regional involvement. The Commission has also signalled its intention to work across sectors and ensure consistency with other bodies that deal with health-related issues.

As you are aware, Conclusions on the Strategy were adopted at the EPSCO Council on 6 December. These Conclusions invited the Commission “In the respect for the principles of subsidiarity and proportionality, and in close collaboration with Member States, develop and present to the Council, for discussion, options for a comprehensive and efficient implementation mechanism, rationalising and streamlining existing structures with the view of producing concrete added value for the Member States”.

The Government also submitted a written contribution in response to questions posed by the Portuguese Presidency to structure the policy debate on this issue at the Council. On the subject of the cooperation mechanism, this emphasised: that representation on the Committee should be at a high level; that Commission representation should take account of the cross-sectoral nature of the work; and welcomed the commitment to review and streamline existing bodies operating in the area of health policy at EU level.

In this context, the Commission has stated that it will work together with Member States to develop concrete ideas on the implementation mechanism during this year. The Slovenian Presidency have signalled their willingness to take this forward as part of their Presidency programme in the area of health, and we will engage fully in this work to ensure the priorities set out above are reflected in the structure that is adopted.

You also raised concerns that “the Commission is extending its involvement in the field of health policy…outside its competence”. The Strategy aims to be a framework document, bringing together the full range of Community activities in the field of health and giving clear and coherent direction for the next seven years (the timescale reflects the current financial perspective). The Strategy sets out the Commission’s objective to adopt a ‘Health in All Policies’ approach and highlights the importance of assessing the impact of new policies on the health sector and health in general. If this approach, which we strongly support, is to be successful, the Strategy must, necessarily, be broad in its scope.

It identifies three key areas, where, it argues, value can be added through a new strategic approach at EU level: good health in an ageing population, responding to health threats, and supporting health systems and innovation in health, and within these suggests areas for priority action. However, the Strategy itself does not set out detailed proposals for Community action in particular areas. Where specific initiatives are pursued, the Commission will need to bring forward proposals through the usual mechanisms, which we will examine on a case-by-case basis to test them against the principle of subsidiarity, fit with UK policy and added value.
In addition, the Commission has recognised the need to discuss and determine priorities together with Member States and other stakeholders, and the importance of regular review to take account of developments. We welcome this initiative which should yield greater opportunities to influence at an earlier stage EU work which will impact on health.

23 January 2008

UNDECLARED WORK (14369/07)

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

Your Explanatory Memorandum dated 12 November was considered by Sub-Committee G at their meeting held on 29 November.

We recognise that, while the Communication does address a serious issue, it appears to have few implications for the UK since actions are already being taken forward which correspond to most of the suggestions set out by the Commission.

We would, however, like to have further information about the Commission’s assertion that the transitional arrangements limiting the mobility of workers from the new Member States area are a factor hampering the engagement of these workers in declared work, and hence that these arrangements may be increasing the extent of undeclared work (second bullet of section 5 of the Communication).

Please would you explain for us in what ways the Commission considers that such transitional arrangements exacerbate the problem of undeclared work. In the case of the UK’s restrictions on the labour market access of migrants to the UK from Romania and Bulgaria, for example, is the point being made that these restrictions can lead to a greater extent of undeclared work in Romania and Bulgaria? Or, alternatively, is the Commission suggesting that these restrictions may cause there to be illegal immigrants to the UK from these countries who carry out undeclared work in the UK?

You make no comment in the Explanatory Memorandum about this statement of the Commission, but confirm that, following a review, it has been decided to maintain the restrictions on the labour market access of migrants to the UK from Romania and Bulgaria until “at least the end of 2008”. In addition to clarifying what the Commission mean by their statement, please would you let us know the Government’s views about this issue.

Pending the receipt of your further views on this aspect of the Commission’s Communication, we will retain this document under scrutiny.

29 November 2007

Letter from Pat McFadden MP to the Chairman

Thank you for your letter of 29 November in which you raise a number of questions concerning the above Communication and my Explanatory Memorandum of 12 November 2007.

I am sorry for the short delay in responding. When submitting the Explanatory Memorandum I alerted the Committee to the cross cutting nature of the issues covered and while BERR clearly has a strong interest in the free movement of workers within the European Union, immigration controls are primarily a Home Office matter. BERR has therefore consulted with the Home Office in preparing this response.

The Committee asks why the Commission asserts “that the transitional arrangements limiting the mobility of workers from the new Member States area are a factor hampering the engagement of these workers in declared work, and hence that these arrangements may be increasing the extent of undeclared work”. According to the European Commission’s Report on the Functioning of the Transitional Arrangements of 8 February 2006 [COM(2006)48 final], the Commission appears to be of the view that there is no direct link between where people move to and where transitional arrangements are in place. The Report suggests that movement relates more to labour supply and demand conditions. This may have led the Commission to a view that undeclared work may come about in circumstances where a high demand for labour exists together with a labour supply with the facility to move to where the work is without being able to take up that work legally.

The Committee also requested an explanation of the UK view on this issue, and in particular in relation to migrants to the UK from Romania and Bulgaria. Despite the current A2 restrictions, there continues to be access for skilled workers from Romania and Bulgaria who meet the skills requirements of the United Kingdom’s work permit arrangements and the Highly Skilled Migrant Programme.
While access for lower skilled workers is quota limited it does exist for those accessing existing schemes (the Seasonal Agricultural Workers Scheme and the Sectors Based Scheme) for the agricultural and food processing sectors. From 2008, both these low-skilled schemes will be restricted to applications from Bulgarian and Romanian nationals only.

We have actively sought to remind employers of their responsibilities regarding the employment of all overseas nationals—not just those from Bulgaria and Romania—and the consequences of employing illegal workers. We sent direct mail to 500,000 employers in those business sectors most at risk of illegal working; and undertook both newspaper and radio advertising to reinforce our message. Advice for A2 nationals in the UK was also translated into Bulgarian and Romanian, and we have worked with the Bulgarian and Romanian Embassies in the UK to disseminate information to the UK-resident population.

We believe that a background of free movement does present some challenges, but we are clear that those who seek to live in the UK must abide by our laws. Employing illegal workers undercuts legitimate business, leads to exploitation, and is not acceptable. Overall we have not encountered large numbers of Romanian and Bulgarian nationals in our operations against illegal workers, the vast majority of those who were encountered have been working legally. The low figures may demonstrate the success of the awareness campaigns highlighting the need for A2 nationals to obtain permission to work. In terms of impacts on non compliance with HMRC tax obligations there is nothing in our work to date that suggests that A2 nationals have a greater or lesser impact on the informal economy.

Whilst perceptually the increase in migrant labour has increased levels of non-compliance, there is no specific evidence to suggest that migrant workers present any greater risk than UK workers. There are some sectors, e.g. construction and agriculture, where the level of non compliance generally is relatively high. This, allied to a disproportionately higher level of migrant workers in such sectors, might well result in higher levels of non-compliance by, or involving, migrant workers. However, such non-compliance is sector driven rather than nationality driven.

The restrictions that the Government has in place for Romanians and Bulgarians were reviewed and a balance struck between the needs of the UK labour market, the wider impact of the migration of accession state nationals on the UK and the positions adopted by other EU countries (as that affects access to the UK labour market). We have looked therefore at the evidence of the benefits and the impacts of migration from the A2 and from the A8 (eight countries which joined the EU in 2004), which we have used to inform this decision. While initial evidence showed that there is a clear positive contribution to the economy from migration, there are some reports of pressures in other areas, including public services. The prudent balance was therefore to maintain restrictions as we monitor the medium to long term effects of accession migration.

17 December 2007

Letter from the Chairman to Pat McFadden MP

Your letter dated 19 December was considered by Sub-Committee G at its meeting held on 10 January 2008.

We were most interested to read your explanation of the Commission’s view that transitional arrangements limiting the mobility of workers from the new Member States are a factor hampering the engagement of these workers in declared work, and hence that these arrangements may be increasing the extent of undeclared work.

We also appreciated your explanation of why the Government does not share the Commission’s view on this subject, and of the rationale for the transitional limits it has imposed on the immigration of lower skilled workers from Bulgaria and Romania.

Against this background, we find it disappointing that the entry relating to this point—in the Policy Implications section of your Explanatory Memorandum about the Communication—gave no indication at all of this important difference of view. We urge that, in your future discussions with the Communication, you challenge the Commission’s view on this point, using as evidence the various sources of information which you quote in your letter to us.

We now clear this document from scrutiny. We ask you, however, to keep us informed of any future evidence that emerges relating to the impact on illegal working of the UK’s transitional limits on the immigration of lower skilled workers from Bulgaria and Romania.

10 January 2008
WHITE PAPER ON SPORT (11811/07)

Letter from Gerry Suctcliffe MP, Minister for Sport, Department for Culture, Media and Sport
to the Chairman

Thank you for your letter dated 16 October 2007 in which you requested a progress report on the Government’s consideration of the EU White Paper on Sport. I am writing to update you accordingly.

Since I sent you the Explanatory Memorandum on 30 July 2007, detailing the Government’s policy position, I have held consultations with sporting organisations, and have also taken part in discussions with other EU Sports Ministers and the Commission on the White Paper’s proposals. Unsurprisingly slightly different priorities emerged from each discussion; however these have highlighted the following areas of specific interest:

— the specificity (or special nature) of sport;
— home-grown player rules
— players’ agents;
— creation of an EU anti-doping network; and
— sustainable financing of sport–gambling revenues.

There has been general support for the White Paper and the Commission’s acknowledgement of the autonomy of sport, from both sports stakeholders and Member States. The Government welcomes the Commission’s approach; activity in this area must be underpinned by a clear commitment to the autonomy of sport and can be supported only where clear value is added to existing national policy.

The Commission is committed to further exploration of home-grown players, players’ agents and the financing of sport. The work surrounding home-grown players and player’s agents is expected to be completed in the first half of 2008; the timeline concerning the sustainable financing of sport is less clear. I will await the results of those investigations before commenting further on those matters.

The Department is pressing the Commission for more detailed information on the proposals, priorities and timelines across all of the White Paper’s 53 recommendations. Many other Member States also pushed for these at the recent EU Informal Sports Ministers’ meeting, during which the White Paper’s recommendations were discussed.

Until these issues can be examined in more detail, the Government’s policy position remains unchanged; principally that the Government supports the Commission’s position that the majority of the challenges facing sport can and should be addressed by sport itself. I welcome the Committee’s comment that it shares this view.

I am sure that discussion regarding the development of the White Paper’s proposals will continue to be on the agenda of future EU Informal Sports Ministers’ meetings. However, the progress of these work streams will undoubtedly be restricted by the EU Sports Unit’s limited resources and its commitment to ongoing work areas. I am also aware that the European Parliament has had early discussions on the White Paper’s proposals, which may also impact on progress; again, these discussions appear to be focused on the key areas which I have identified above.

The Commission held a conference for European sports bodies on 8 October 2007 to discuss the White Paper’s proposals and the Government has received some positive feedback concerning that event. I am aware that bilateral discussions are also taking place, suggesting that the Commission is committed to meeting the structured dialogue and engagement policies it outlines in the Paper, which is welcomed.

The recent EU Informal Sports Ministers’ meeting also posed the possibility of resurrecting the EU White Paper Working Group, which was originally established to allow Member States to discuss issues related to the proposed White Paper prior to the document’s publication. Provided the terms of reference for the working group are clear and add value to discussions, the UK supports this approach as useful way to make progress on the Paper’s recommendations, notably identifying priority issues.

As the EM explained sport is not a competence under existing community law; programmes are progressed by attaching them to EU competences. However, the Reform Treaty proposes to provide a legal base for a sports programme, budget and consideration of sport within the policy development of other Commission services. The Department will be working closely with other departments and the Commission to ascertain the impact of the Treaty on the role of sport in the EU, the provisions outlined in the White Paper and any subsidiarity issues that may arise.

13 Correspondence with Ministers, 11th Report of Session, HL Paper 92, p 352.
As this update illustrates, discussions regarding the White Paper’s proposals, and associated matters such as the impact of the Reform Treaty, are at an early stage and will continue into next year. I therefore intend to provide the Committee with an additional progress report towards the end of April/start of May 2008, when more detailed information should be available.

5 December 2007

Letter from the Chairman to Gerry Sutcliffe MP

Your letter dated 5 December was considered by Sub-Committee G at its meeting held on 10 January 2008.

We note that since you last wrote to us about this document, you have held consultations with sporting organisations about the Commission’s White Paper. In your letter you mention the areas that this consultation highlighted but give no information about the key points that were of concern to stakeholders.

When you write to us again in April or May with further information about the Commission’s priorities and timetable for actions arising from the White Paper, please also let us have more detail of the views of UK stakeholders on these matters. We would also, at that time, welcome a clarification of the Government’s policy position in relation to these stakeholder views.

Pending this further information, we will continue to hold this document under our scrutiny reserve.

10 January 2008

WORKING TIME DIRECTIVE (15098/02, 12683/04, 9554/05)

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

I am writing to outline the Government’s position on potential negotiations on a revised draft of the Working Time Directive and perhaps on a revised proposal on the Temporary (Agency) Workers Directive that may take place at the next Employment Council on 5 December. I consider it quite likely that the Portuguese Presidency will decide to attempt to resolve the Working Time Directive and they may also look to make further progress on the Agency Workers Directive—both dossiers are listed on the draft agenda of the Council for political agreement. I believe that you will be receiving shortly—if not already—the annotated agenda from colleagues at the Department for Work and Pensions.

We have just received a draft proposal from the Portuguese Presidency on the Working Time Directive and a narrative paper on the Agency Workers Directive (both enclosed for your information). Whilst we believe that the Presidency may well table new documents shortly before the Employment Council, our early analysis of the initial Working Time Directive proposal is that it is similar in structure to the Finnish Presidency proposal of 2006.

We are still analysing the full effect of the new Working Time Text, but from the UK Government’s point of view, it is a step forward in that it no longer contains text that envisages the end of the opt out. Also previous text addressing the issues raised by the SIMAP and Jaeger judgements has not been changed in a way in which we would disagree.

The picture on whether the Presidency will seek political agreement on the Agency Workers Directive at the Council is less clear. The attached Presidency narrative paper gives a flavour of the state of current discussions, although it is of course a summary. Member State positions on many issues are often not as black and white as a summary can convey.

The Government’s position on the Directive remains the same in that we continue to support the underlying principles enshrined in the current draft Directive and we have sought to work with the Commission and other Member States to reach agreement on a text that gives appropriate protections to agency workers without putting their jobs at risk. We have also sought an agreement which encourages the removal of the restrictions and prohibitions on agency work and workers that exist in many other EU Member States. In this context, the Committee might be interested to see the attached report by EUROCIETT.

The Presidency’s suggestions have significantly weakened text requiring Member States to remove restrictions and prohibitions that cannot be justified. We have also argued the Directive should require every Member State to give equal treatment after an appropriate qualifying period to agency workers. (We are aware that in some countries collective agreements—either at national or company level—mean agency workers do not receive equal treatment, including not receiving equal pay, with permanent employees in the hirer company. It appears though that this would be allowed to continue under the terms of the draft Directive). It has become clear through EU negotiations that Member States which use collective agreements wanted to retain this...
“flexibility” to derogate from the principle of equal treatment. The Presidency have proposed the Directive should continue to allow Member States which use collective agreements to derogate in this manner.

The UK government made it clear—when the discussions re-started under the Portuguese Presidency—that it was serious about wanting to find a compromise on this Directive. However at this stage there remain outstanding issues.

Whilst we are doing everything we can to support the Presidency’s efforts to find an acceptable political agreement on these dossiers, and to resolve the Directives in line with UK objectives, we do not yet know if these papers constitute the final Portuguese position—or even if the Presidency will table proposals at all at the Employment Council on December 5.

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 any final Presidency proposals (if they materialise) in time for you to discuss the scrutiny position before the Council on 5 December. I am therefore writing to confirm to the Committee that the UK’s policy and negotiating priorities have not changed on either dossier.

On the Agency Directive, the Government continues to support the underlying principles enshrined in the Directive and will continue to work with the Commission and other Member States to reach agreement on a Directive that gives appropriate protections to agency workers without putting their jobs at risk and which encourages the removal of the restrictions and prohibitions on agency work and workers.

On the Working Time Directive, our priorities remain a solution to the problems caused by the ECJ SiMAP and Jaeger judgements, and the retention of the individual right to opt out of the 48 hour maximum working week, without unnecessary restrictions.

If possible, I will endeavour to send you any final formal proposals we receive from the Portuguese Presidency, with the Government’s view, in time for the Committee to consider them. However, should this not be possible, and a deal acceptable to the UK appears achievable at Council on one or both of the dossiers, I do hope the Committee will understand that I might need to override the Committee’s scrutiny reservation on this occasion. I would of course write to you as soon as possible after the Council.

22 November 2007

Letter from the Chairman to Pat McFadden MP

Your letter dated 22 November was considered by Sub-Committee G at its meeting held on 29 November 2007. Even though the position with these two dossiers is far from clear, it is most helpful that you wrote to us in time for the Committee to consider the issues relating to them in advance of the 5 December Employment Council meeting when they may be brought forward by the Presidency for political agreement.

Working Time Directive

On the Working Time Directive, we have—as our Inquiry Report published in April 2004 made clear—been most concerned about the implications for the UK of the existing operation of the legislation. We consider that the restrictions the Directive imposes, following the ECJ SiMAP and Jaeger rulings about on-call duties for resident hospital doctors, are detrimental to the operation of effective health services. Our view is also that the individual opt-out from the 48 hour limit to the working week, which is allowed under certain circumstances, should be available indefinitely and should not be subject to an end date.

We are therefore most encouraged that the latest text put forward by the Portuguese Presidency would alleviate substantially the problem in relation to on-call hours. We also welcome the fact that it would remove the previous end date to the available opt-out from the 48 hour working week limit.

We recognise that there has not yet been time for the Government to assess the full implications of the latest draft, and we therefore are not in a position to release the document from scrutiny until we have been able to consider a further letter from you providing a full assessment. However, we do feel that, if the opportunity arises at the 5 December Council meeting to join a political agreement to a text that removes the long-standing UK problems with this Directive, you should take it.

We would not regard your agreement to the revised Directive in those circumstances as a breach of the House of Lords Scrutiny Reserve Resolution of 6 December 1999. Under the terms of section 3(b) of that Resolution, we indicate that such agreement need not be withheld.
**Draft Temporary Workers Directive**

The position with the proposed temporary workers directive is far less clear and, as you indicate, it is less likely that this will come up for political agreement at the December Council meeting. We note that the draft text which may be put forward is likely to be significantly different from the original text of the proposal dating from a number of years ago.

Despite this lack of clarity on the position with the draft temporary workers directive, you do indicate in your letter that the Portuguese Presidency has put forward suggestions for a revised text of the directive which would appear to weaken its requirement for Member States to remove restrictions and prohibitions on agency work which cannot be justified. We would deplore such a weakening of the text, and we encourage you to continue to seek to ensure that the text of the draft directive is robust in relation to the undesirability of restrictions and prohibitions on agency work.

Given the considerable uncertainties relating to the draft directive on temporary workers, we will continue to hold this under scrutiny. We ask you to provide us with an Explanatory Memorandum relating to the new text, when this becomes available, so that we can take forward the scrutiny process on the basis of this fresh information.

**Handling of Council Business**

A general point which arises from these two cases is that it seems to us bad practice that the Presidency documentation on such significant matters is made available so late before a key Council meeting, when decisions with far reaching implications may need to be taken. Apart from anything else, this results in a situation in which an orderly process of Parliamentary scrutiny is most difficult, if not impossible.

It would be valuable if you could let us know if there have been any mitigating circumstances in this particular case which made such timing inevitable so that we can assess whether to pursue this issue further.

We look forward to hearing from you about further developments on these dossiers and in response to the various matters we have raised in this letter. In particular, please let us have an account of how these two dossiers are handled by the Presidency at the 5 December Council meeting and what is the outcome.

29 November 2007

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**Letter from the Chairman to Pat McFadden MP**

This is to follow-up on our letter to you of 29 November 2007, which looked ahead to the possibility of agreement being reached on these two directives at the 5 December 2007 Employment Council meeting.

We note, however, from the DWP’s 13 December Post-Council Written Ministerial Statement, that the Presidency decided that while some progress had been made, further in-depth discussion was needed on both directives before they could be brought forward for agreement.

Since then, on 22 February 2008, we note that during the second reading debate of a Private Member’s Bill relating to the equal treatment of Temporary and Agency Workers, you referred to the proposed temporary workers directive. We understand that your message on this was that the Government was engaged in discussions with the CBI and Trades Unions to set up an *ad hoc* forum or commission—“akin in some ways to the Low Pay Commission”—which would have the objective of making proposals relating to the treatment of temporary workers and of agreeing on some of the important details of the proposed European directive.

To inform our scrutiny of both these important directives, we are most interested to learn more about your plans for reaching a consensus in the UK on the temporary workers directive and about other developments. It would be most helpful, therefore, if you would be willing to attend one of the Thursday morning meetings of EU Sub-Committee G to give evidence to us about them on the public record. The Clerk to that Committee will contact your Office to see if a convenient date can be arranged.

May we remind you that, in our letter of 29 November, we asked if you could send us a fresh Explanatory Memorandum relating to the Commission’s latest draft proposals for the directive on working conditions for temporary workers. The original EM was prepared as long ago as 2002 and, since the latest Commission drafts of the directive in circulation are very different from the original 2002 text, it is now not a helpful source of information.

28 March 2008
YOUTH IN ACTION 2007–13 (6328/08)

Letter from the Chairman to Beverley Hughes MP, Minister of State for Children, Young People and Families, Department for Children, Schools and Families

Your Explanatory Memorandum was considered by Sub-Committee G at their meeting held on 13 March. We accept that the Commission’s proposal to speed up the decision making procedure for awarding grants for youth in action projects seems well intentioned.

We understand that the modification to the proposed amending Decision that you wish to seek would not detract from this approach, but would ensure that any particularly significant projects are brought to the attention of Member States represented on the Youth in Action Programme Committee before they can go ahead.

Our view is that the safeguard you wish to pursue would be prudent and we urge you to seek agreement to it in Council and elsewhere.

We now clear the Commission proposal from scrutiny and ask you to write to us again when the final form of the amending Decision to be considered at the 22 May Education and Youth Council meeting has been decided.

13 March 2008