HOUSE OF LORDS
European Union Committee

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London
SW1A 0PW
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The primary purpose of the House of Lords European Union Select Committee is to scrutinise EU law in draft before the Government take a position on it in the EU Council of Ministers. This scrutiny is frequently carried out through correspondence with Ministers. Such correspondence, including Ministerial replies and other materials, is published where appropriate.

This edition includes correspondence from 1 January 2018 – 31 July 2018

EU JUSTICE SUB-COMMITTEE

CONTENTS

Letter from the Rt Hon David Gauke MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice

Sir Oliver Heald QC, last wrote to you about this proposal on 22 January 2017.

Given the time that has passed since then I thought your Committee would appreciate an update on the negotiations. Progress on this very technical proposal has been steady but slow. Although the Commission issuing its proposal two years ago, for some parts of the text the working group has only recently been considering the first Presidency redrafting suggestions. Despite that, the incoming Austrian Presidency hopes to make as much progress as possible with the ambition of achieving adoption by the end of the year.

In this letter I will give an update on each of the six areas of the proposal as set out in the Explanatory Memorandum.

Procedures supplementing the 1980 Hague Convention regarding abducted children

There has been much detailed discussion of how to re-formulate these key provisions of the Regulation, in part to achieve certain substantive changes, and in part to clarify the aim of other provisions. A UK suggested redraft is providing the basis of further discussions (Articles 26(1)–(4)).

A further achievement of the UK in this context has been to confirm with the Commission that its original proposal for a re-formulation of the well-known 'override' provision (which allows a custody judgment from the state of habitual residence of an abducted child to 'override' a non-return order from the state of abduction) created new obligations for courts when this was not the intention and would be objectionable on subsidiarity grounds. Work continues, however, on how to re-formulate the provision so as to avoid this effect (Article 26(4)).

There has been general support for the principle of clearer deadlines for each stage of the procedure to reduce delays, although the exact deadlines and how these will work have yet to be agreed. Most delegations recognise the benefit of concentration of jurisdiction (Article 22) to ensure that courts build up expertise in dealing with such cases, but a number of delegations have shared our concerns, on subsidiarity grounds, to including an obligation in the Regulation. We wait to see how the Presidency suggests taking this forward.

On the question of whether there should be a limit to one appeal (Article 25), there is consensus that only an 'ordinary appeal', as it is known in civil law countries, should be available against the decision ordering or refusing the return of the child. That will not preclude challenges on human rights and constitutional grounds. This is subject to our insistence in the negotiations that the concept of ordinary appeal needs to be clarified for Ireland, Cyprus and the United Kingdom, as in Article 51 of the recast Brussels I Regulation, so that any form of appeal (on factual or legal grounds) is possible.

We raised some subsidiarity concerns about requirements for courts to have to provide particular information in court judgments. One example has been deleted (Article 26(1)) but another remains for the time being (Article 10(5)).

Placement of a child in another Member State (Article 65)

This was an issue discussed at the last JHA Council where there was general support for the Commission's objective that the Regulation needs clarification as to the circumstances in which consent of the relevant authority in a Member State is required when another Member State contemplates placing a child in a foster family or institutional care in that state. This need for clarification has arisen because the current Regulation, which requires consent for such placements, is interpreted differently by Member States, in particular as to what constitutes a placement with a foster family. There is disparate interpretation in particular where a proposed placement is with a member of a child's extended family – some Member States require or seek consent in these circumstances and others do not. Discussions are ongoing, however, about how to formulate the circumstances in which consent is

required. A UK suggestion that this provision should include a requirement that information on any contemplated funding for the placement was agreed.

Discussions are also ongoing about the time limit during which such consent should be given. The current Regulation has no deadline which can give rise to delays of several months which are not helpful to children and increase the risk of a breach of the 26-week statutory limit for care proceedings decisions in England and Wales. In our consultations on the proposal there was general support for such a widening of the requirement for consent.

There is also ongoing discussion, led by a small number of Member States, about the procedures that a court or other authority should undertake when considering placement of a child that has the nationality of, or a close connection to, another Member State. The concern is that children are being placed with foster families or in institutions in the state in which they are resident, when placements in other Member States with which the child has connections, including, for example, family members, should be considered. A number of proposals have been suggested which include procedures for notification and receipt of information and/or consultation.

Automatic recognition of judgments

At the December 2017 JHA Council, Ministers accepted that in principle the procedural step known as 'exequatur' should be abolished in the revised Regulation. 'Exequatur' is the procedural step that requires that a judgment from another Member State is registered before it can be recognised as valid. This step is currently required for most children judgments within the scope of the Regulation and for all divorce, judicial separation decrees etc. This step is currently not required for two categories of judgments – known as 'privileged decisions' – orders for contact with children and orders in custody decisions that entail the return of an abducted child. During the negotiations there has been a lot of discussion about what procedures and safeguards should apply once exequatur is abolished for the remaining judgments. Currently, for the privileged decisions, the opportunity for a party to challenge enforcement of the decision is essentially in the Member State where the decision and 'certificate' for enforcement is given, whereas for all the other judgments, it is in the state of enforcement.

There was some discussion about whether the new Regulation should have one method for the automatic recognition of judgments or retain a separate system for the privileged decisions. The Government, as well as a number of other Member States, thought that one system would be better for users of the Regulation but a number of Member States have insisted that a separate system for privileged decisions should be retained. Therefore, it will remain the case that for privileged decisions, the opportunity to challenge enforcement will remain in the state of origin, and for those decisions where exequatur is now to be abolished, the opportunity to challenge enforcement will remain at the stage of enforcement. The working group is now considering how best to provide a streamlined method for automatic recognition that allows different procedures for the privileged and non-privileged decisions. While this is not the Government's preferred option it believes it is acceptable and considers the safeguards for parties, which for the non-privileged decisions are based on the already agreed Brussels I recast Regulation, to be appropriate.

Hearing the child

The Commission's proposal to create a new requirement for courts or other authorities to provide an opportunity for a child to express his or her views in proceedings under the Regulation (Article 20) has received almost unanimous support from Member States, despite a number of concerns being raised by the Government. These concerns have been on several fronts. First, this provision would create a new right in EU law that would be directly enforceable in UK courts by individuals. The right would be similar to the right set out in Article 12 of the UN Convention of the Rights of the Child, but importantly, that right is not enforceable in UK courts because it has not been incorporated into UK law and the UK is a 'dualist' system, meaning it would need to be in order for individuals to have recourse to domestic courts for any breach of these rights. Second, the direct enforceability of these rights will mean that courts, including the CJEU, will interpret them and therefore potentially have effects on national law and procedure, including potentially creating uniform requirements for when and how a child is heard. Finally, even though the Regulation is meant to apply only to cross-border cases, the effect of the provision would almost certainly be that courts would apply it in domestic cases, since any domestic case can become cross-border later (e.g. if a parent moves and needs to enforce a contact decision in another Member State) and a court decision that did not comply with the Article 20 requirement might not be enforceable

As a result of our interventions, the latest text from the Presidency provides that the requirements for the process and manner by which the child should be heard need only be done in accordance with national law and procedure. This lessens the concerns the Government had in relation to the development of a possible uniform requirement to hear the child and the impact on national law and procedure, but some concerns remain. Given the level of support for this provision from other Member States, including others with 'dualist' systems, and the fact that all other Ministers at a JHA Council agreed in principle that the Regulation should include such a provision, inclusion may be inevitable. The Government intends to continue to work with the Presidency and Member States to limit the provision as far as possible, including any effect on national law.

One suggested addition to Article 20 clarifies that Member States can provide the child with the opportunity to express his or her views in ways that go beyond any minimum requirements of the right as expressed in the provision.

The Commission's policy reason for including Article 20 was to create a clear and binding requirement for hearing the child that would then enable it to remove from the Regulation the ability that courts currently have to refuse to recognise and enforce children judgments from other Member States where the court of origin had not heard the child in line with the fundamental principles of the Member State of enforcement. As mentioned in the Explanatory Memorandum, practitioners had not at the time raised concerns about the Commission's suggestion to remove the rights of courts to refuse to accept decisions on the grounds of hearing the child. Since then we have continued to hear no concerns on this point and the Government has supported the Commission's suggestion to remove this possibility for refusal to recognise or enforce children judgments. A number of Member States do not agree, however. During the negotiations we have pointed out that including both a provision on hearing the child and a right to refuse to enforce a decision on the grounds of hearing the child will provide parties with two opportunities to challenge a decision on those grounds – once in the Member State which makes the decision, and then later in the Member State of enforcement. Several Member States have supported the UK's position but it remains to be seen what happens on this point as negotiations progress.

Enforcement of decisions

The Government continues to support action which removes obstacles to the effective enforcement of decisions. It was concerned, however, that Article 32(2) of the Commission text was, for the first time, harmonising to some extent the enforcement procedures in this area. A majority of Member States shared these concerns and this paragraph has now been removed from the text. Article 31(1) has also been amended to delete the text "in so far as it is not covered by this Regulation" so that the text states specifically and without qualification that the procedure for the enforcement of decisions given in another Member State shall be governed by the law of the Member State of enforcement. Discussions continue on if/how courts should provide reasons for enforcement action taking longer than six weeks (Article 32(4)).

The Commission had also proposed that the court competent to decide on the recognition of decisions should be the same as that which is competent for enforcement. Most Member States were against this suggestion on subsidiarity grounds so this has been removed from the text and the decision on the courts that are competent for both processes remains a matter for Member States to decide.

With regard to the proposal that provisional or protective measures ordered by a court that does not otherwise have jurisdiction under the Regulation to make such orders should be capable of enforcement in other Member States, there is ongoing discussion as to whether this should happen only in cases where a court is considering the return of an abducted child. This will mean, for example, that in cases where allegations of abuse have been made against a left behind parent and a court decides a child can be returned only where there is supervised contact with that parent, the orders of that court need to be applied by the court in the Member State to which the child is to be returned until such time as the latter court makes its own decision on the matter. This should give courts fewer reasons not to return a child and will increase protection for children who might be re-abducted to another country.

Cooperation between central authorities

Subject to a number of technical issues that are still open for discussion there has been general support for the provisions which clarify the functions of central authorities. The issue that raised the most concern was in relation to Article 61 which would have obliged Member States to ensure that central

authorities had adequate resources to enable them to carry out their functions under the Regulation. Most Member States believed that such a provision was inappropriate and such matters were best left to Member States to decide. This has been removed from the text. As negotiations continue the Government will consider carefully the resource implications of each of the provisions relating to the central authorities.

The Government will provide a further update on negotiations in due course.

17 July 2018

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ESTABLISHING A CENTRALISED SYSTEM FOR THE IDENTIFICATION OF MEMBER STATES HOLDING CONVICTION INFORMATION ON THIRD COUNTRY NATIONALS AND STATELESS PERSONS (TCN) TO SUPPLEMENT AND SUPPORT THE EUROPEAN CRIMINAL RECORDS INFORMATION SYSTEM (ECRIS-TCN SYSTEM) AND AMENDING REGULATION (EU) NO 1077/2011 (10940/17)

Letter from the Rt Hon Nick Hurd MP, Minister of State for Policing and the Fire Service, Home Office

Thank you for your letter of 15 November 2017. I note that the Committee requests further information on the European Commission's draft Regulation to establish a centralised identification system for third country national (TCN) convictions in the EU, via the European Criminal Records Information System (ECRIS).

I extend my sincerest apologies for the delay in responding which was caused by an administrative error within my Department. Upon being made aware of your letter my scrutiny co-ordinators informed the Clerk to your Committee of the error and I have endeavoured to reply to your outstanding questions as soon as possible.

"On the question of data protection safeguards, if the UK received a request (outside of a request made for the purpose of criminal proceedings) what measures are in place to ensure that information would be disclosed in a reasonable but proportionate way? Will this be impacted by the current legislation to implement the General Data Protection Legislation (GDPR)?"

When responding to an ECRIS request for purposes other than criminal proceedings, including in relation to third country nationals, ACRO Criminal Records Office, the UK Central Authority, do not disclose 'spent' convictions within the meaning of the Rehabilitation of Offenders Act 1974 (ROA). The Government considers that the ROA is consistent with the Data Protection Act 1998 as well as the General Data Protection Regulation (GDPR) and the Law Enforcement Data Protection Directive 2016/680 (Directive 2016/680).

Furthermore, under the existing Data Protection Act 1998, processing of personal data must be proportionate and necessary in order to meet the data protection principles. Similar requirements are applicable for law enforcement data sharing between EU Member States under the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014/3141. This will continue to be the case under the GDPR and proposed Data Protection Bill, parts of which transpose the Directive 2016/680. Article 10 of the GDPR places additional safeguards over the use of criminal conviction data such as that the processing should remain under the control of an official authority or, when authorised by law, providing for appropriate safeguards for the data controller's rights and freedoms. Clause 9 of the Data Protection Bill with reference to Parts 1, 2 and 3 of Schedule 1 set out the conditions that must be met in order for the processing to be authorised by UK law. Part 3 of the Bill affords specific protections in respect of the processing of personal data for law enforcement purposes.

"We ask what assurances the Government will seek in respect of its continued access to ECRIS post-Brexit and the new ECRIS third country nationals (TCN) system."

Opting to participate in this draft Regulation supports the Government's commitment to continued cooperation with the EU on security, law enforcement and criminal justice. We have proposed a bold new strategic partnership with the EU, including a comprehensive agreement on our future security,

law enforcement and criminal justice co-operation. The future partnership paper "Security, law enforcement and criminal justice" sets out our plan to seek an overarching agreement with the EU that supports future cooperation on security, law enforcement and criminal justice.

By agreeing to participate in measures such as this, the Government is underlining the importance to the UK of EU tools in achieving a practical relationship with the EU on security cooperation after Brexit. The mechanism by which the EU will cooperate with the UK after we leave, including an effective means of sharing criminal records information, will need to be addressed in the course of negotiations.

I trust this addresses the Committee's concerns, and once again I sincerely apologise for the delay in responding to your letter.

12 January 2018

Letter from the Chairman to the Rt Hon Nick Hurd MP, Minister of State for Policing and the Fire Service

Thank you for your letter of 12 January 2018 which was considered by the EU Justice Sub- Committee at its meeting of 20 February. We decided to retain the proposal under scrutiny.

We note that the Government has opted into the proposal and that on 8 December 2017, the Justice and Home Affairs Council adopted a General Approach on both the underlying Directive on ECRIS and the proposed Regulation that we are scrutinising.

We understand from the separate Explanatory Memorandum provided by the Minister of State, Ben Wallace, on 23 January (12th Progress Report Towards an Effective and Genuine Security Union) that the UK contributed to the finalisation of the texts in working groups and supported the Estonian Presidency in achieving its aim of reaching a General Approach during its term.

We regret that you did not, as the Committee has a right to expect, inform us of any of these matters in your most recent correspondence and we would ask you why that is the case? In particular, we note that in separate correspondence to the House of Commons European Scrutiny Committee you sought to provide an explanation for the Government's approach. Please confirm that in future you will keep us properly informed of such important developments. In addition, it would be helpful if you informed us of the guidelines you give your officials in order to provide us with a timely reply.

We also have concerns about the way in which this proposal was dealt with, which meant, that the Committee was unable to express a view, or consider a scrutiny waiver, before the General Approach was agreed. The use of abstention to get around the risk of a scrutiny override, when the Government supports a General Approach, is in breach of the spirit, if not the letter, of the scrutiny reserve.

We expect a reply within the usual ten days.

22 February 2018

Letter from the Rt Hon Nick Hurd MP, Minister of State for Policing and the Fire Service

Thank you for your letter of 22 February.

I regret that the Committee was unable to consider a scrutiny waiver on the General Approach. As set out in my previous correspondence of 12 January, an unfortunate administrative error within my Department meant your questions of 15 November went unanswered until then.

Outside of our formal correspondence process, I note that the Clerk to your Committee was informed on 1 December of the intention of the Estonian Presidency to bring the file to the 7 December Justice and Home Affairs Council for a General Approach to be agreed. I can assure you and the Committee that there was no intention for abstention to be used to circumvent the risk of a scrutiny override.

All correspondence to your Committee is copied to the Clerk to the House of Commons European Scrutiny Committee and vice versa. However, I fully accept the need to ensure the Committee is properly informed of important developments, and am clear that I will look to do my utmost in ensuring that this happens in future.

The provisional timetable from the Bulgarian Presidency of the trilogue process between the Council, the European Parliament and the Commission suggests the process is expected to be completed by June. I will ensure you are kept informed of significant developments in this area, including in respect of the inclusion of dual nationals in the proposal (which the UK will continue to defend), which is opposed by the European Parliament. We will provide updates, particularly on this matter and on the proposed route for third countries to access criminal records information via Eurojust, as the discussions progress.

6 March 2018

Letter from the Chairman to the Rt Hon Nick Hurd MP, Minister of State for Policing and the Fire Service

Thank you for your letter 6 March 2018 which was considered by the Committee at its meeting of 20 March 2018. We decided to retain this proposal under scrutiny.

We note your explanation of the issues that arose in relation to this proposal, and your undertaking to keep us informed of any further developments. We also note that the text of the draft Withdrawal Agreement published on 19 March 2018 contains a relevant provision at Article 58(1)h. It provides that:

"Council Framework Decision 2009/315/JHA46 shall apply in respect of requests for information on conviction received before the end of the transition period by the central authority; however, replies to such requests cannot be transmitted after the end of the transition period through the European Criminal Records Information System established pursuant to the Council Decision 2009/316/JHA47."

In that regard, and on the assumption that a text is agreed, please update us on the proposed route for third countries to access criminal records information.

We look forward to your response in due course.

22 March 2018

Letter from the Chairman to the Rt Hon Amber Rudd MP, Home Secretary, Home Office

At its meeting of 17 April 2017, the Lords EU Justice Sub-Committee discussed the Security Minister's decision to cancel a long-arranged appearance to explain the Home Office's poor handling of scrutiny of Doc 15816/16 (a proposed EU Regulation on the mutual recognition of freezing and confiscation orders).

The Minister's failure is the latest incident in a pattern of poor behaviour by your department that has been developing over recent months. See also our correspondence in relation to scrutiny of Doc 10940/17 (the proposal dealing with the European Criminal Records Information System and third country nationals), and the unsatisfactory Ministerial responses to our inquiry on Brexit: citizens' rights.

We therefore ask that you appear before us in person to account for your department's poor practice.

To that end, our officials will be in touch shortly to arrange a convenient date.

20 April 2018

Letter from the Rt Hon Nick Hurd MP, Minister of State for Policing and the Fire Service

Thank you for your letter of 22 March.

You asked to be kept updated on the proposed route for third countries to access criminal records information through the proposed ECRIS (TCN) centralised system, noting that you consider the following provision in the draft Withdrawal Agreement text, published 19 March 2018 to be relevant in this regard:

> "Council Framework Decision 2009/315/JHA46 shall apply in respect of requests for information on conviction received before the end of the transition period by the central authority; however, replies to such requests cannot be transmitted after the end of the

transition period through the European Criminal Records Information System established pursuant to the Council Decision 2009/316/JHA."

The above provision in the draft Withdrawal Agreement, which has yet to be agreed, concerns how ECRIS co-operation would wind down at the end of the transition period in the event of there being no deal on a future relationship. By contrast, the draft Regulation contains provisions in relation to indirect access (via Eurojust) for third countries to access information held in the proposed ECRIS (TCN) centralised system which may support third countries in understanding where criminal records information on TCNs in held in the EU. This may allow them to make criminal records information requests to EU Member States, although not via ECRIS. While we note the potential benefits of this mechanism for the UK once the UK leaves the EU, the mechanism by which the EU will cooperate with the UK as a third country will need to be addressed in the course of the negotiations and we have proposed an agreement with the EU on security, law enforcement and criminal justice.

I would also like to take this opportunity to update you on the most recent developments in the trilogue process between the European Council and European Parliament on this dossier:

- **Dual EU-TCN nationals:** The European Parliament are not currently minded to see the inclusion of dual EU-TCN nationals in the proposed ECRIS (TCN) centralised system in accordance with the agreed wording of the Council. As I have previously stated, including these individuals is important to close a loophole in which criminals with dual nationality could hide their previous criminality by failing to disclose the nationalities they hold. The Council are continuing to support the General Approach text.
- **Use of proposed ECRIS (TCN) centralised system for purposes outside of criminal proceedings**: Under the current ECRIS legislation, Member States can make requests for criminal proceedings and for "other" purposes. For other purposes, Member States are only required to respond in accordance with its national law and within 20 working days (for requests for criminal proceedings the response must be received within ten working days). The European Parliament has proposed an explicit list of "other purposes" that checks to the proposed ECRIS (TCN) centralised system can be made for. Most EU Member States are against this list being included in the operative part of the legal text so as not to unnecessarily limit the usage of the system. We agree and will support the Council in the trilogue negotiations so as not to explicitly limit the circumstances under which information might be requested.
- **Fingerprint threshold:** Whilst the compromise between Member States in reaching the general approach on the fingerprint threshold which was agreed in the negotiations has yet to be discussed in trilogues, we will continue to defend a position of high ambition on a fingerprint threshold and challenge any attempts by the European Parliament to water down the circumstances under which fingerprints must be taken and loaded into the proposed ECRIS (TCN) centralised system.

In terms of timescales, as previously indicated, the Bulgarian Presidency aims to have the trilogue process completed by the end of their June term and for the text to be confirmed- likely via political agreement at COREPER- at the end of June. We will endeavour to give as much notice as possible to you on the version of the text which will go for agreement to enable your Committee to clear the measure from scrutiny.

I will keep you updated on further progress on this dossier.

18 May 2018

Letter from the Rt Hon Nick Hurd MP, Minister of State for Policing and the Fire Service

I am writing to update your Committee on the progress of this dossier. As indicated in my letter to the European Scrutiny Committee of 30 May 2018, to which your Committee was copied, the Bulgarian Presidency is committed to finalising the trilogue process by the end of June and for the dossier to be put forward for political discussion at COREPER in late June, for agreement at Council, thereafter. Whilst we do not have the final text, I wanted to provide you with the latest position on the dossier, ahead of an expected vote so that you may have the opportunity to consider your scrutiny reservation.

Although some issues remain under discussion (for example, on the threshold above which fingerprints must be taken to confirm identity), and potentially subject to concessions, I believe the final text will be one the UK should support. This is because the changes it introduces would provide for a much more efficient mechanism for identifying where convictions of Third Country Nationals (TCN) are held in the EU, than is the case now.

Positively supporting the approach at Council would underline our ambition for a future relationship with the EU providing for data-driven law enforcement and sustaining information sharing capabilities as set out in the UK Government's vision for the future UK-EU Security Partnership ('Framework for the UK-EU Security Partnership') published on 9 May.

Turning to some of the key issues in the proposed text, the information will be used to support criminal proceedings and "other" purposes. The draft text now lists a specific range of purposes for using ECRIS-TCN, including for employment vetting, visa and immigration purposes, and for combating child sexual exploitation through Directive 2011/93/EU. Given Member States can notify the Commission where they intend to check ECRIS-TCN for purposes other than those listed, we are content that this approach does not limit usage of ECRIS-TCN in any way.

On third country access to identity information held in the ECRIS-TCN centralised system, I am confident that what has been agreed provides a helpful route in for third countires and other international organsiations to identify where TCN convictions are held across the EU. The draft text states that Eurojust will act as the conduit for such requests, and that it will only inform a third country that conviction information is held if the relevant Member State(s) consents. In terms of access to ECRIS-TCN by Eurojust, Europol and the EPPO, there is agreement in trilogues on the draft text which allows those organisations to access the central system. Since the General Approach was agreed, the draft text now makes clearer that these organisations cannot access any criminal records held in Member State's national registers, nor be able to make requests via the exiting decentralised ECRIS network, the expectation being that they should use other established channels for requesting the information.

On facial imaging, the European Parliament (EP) have not opposed the General Approach text that facial imaging software be used to confirm identity in the future. However, they have suggested that the inclusion of facial imaging software only be integrated into ECRIS-TCN once the technological implications have been fully assessed and understood. This was agreed in trilogues.

Both the Council and the EP have supported the role of eu-LISA in the development of the system and whilst there are some minor issues to resolve over the role of eu-LISA on the management board, we expect the final text to confirm the role of eu-LISA, as we originally envisaged. We remain supportive of this approach as eu-LISA are experienced in developing systems of this nature.

The implementation period for ECRIS-TCN is still to be agreed. However, irrespective of whether the General Approach text (36 months) or EP amended text (24 months) is agreed, the point at which Member States will need to implement ECRIS-TCN is expected to fall beyond the point at which the UK will leave the EU. We will need to take into account the UK's future relationship with the EU insofar as it concerns the arrangements for exchanging criminal records information between the UK and the EU.

On dual nationals, it is becoming clearer that their continued inclusion in the final text is less likely. The EP (supported by the Council Legal Service) remains strongly opposed to the inclusion of dual nationals in any way in the proposal, on the grounds that it would be discriminatory for dual EU-TCN nationals to be treated differently to EU nationals for the purposes of criminal records exchange via ECRIS. The UK continues to support the General Approach text, however, I judge that we can show flexibility here. As I have indicated, the proposal continues to provide for a much more efficient mechanism for identifying where convictions of TCN are held in the EU than is the case now and that remains the case without the inclusion of dual nationals in the system.

The UK continues to resist the desire of the EP to narrow the circumstances under which fingerprints must be taken for ECRIS-TCN. The UK and a majority of Member States have been clear on the importance of fingerprints as the primary form of identification in ECRIS-TCN. Again, although the final position is unclear, we have welcomed the inclusion of fingerprint capture for identification purposes in the proposal and whilst we will continue to support a position of high ambition on this issue we should

not oppose a compromise, particularly as there is now a possibility in the draft text for fingerprints to be used more widely than is proposed, where a Member State chooses to do so.

I trust this further information is helpful in supporting your deliberations on this matter and would welcome your consideration of my suggestion that we actively support this dossier in Council.

I must also apologise that the final Impact Assessment and Justice Impact Test is not yet available. My officials will endeavour to provide this to your Committee before recess. Irrespective of any decision by your Committee to clear from, or retain this dossier under scrutiny, I will endeavour to keep your Committee updated on the progress and developments on ECRIS-TCN as promptly as possible.

7 June 2018

Letter from the Chairman to the Rt Hon Nick Hurd MP, Minister of State for Policing and the Fire Service

Thank you for your letters of 18 May and 7 June 2018 which were considered by the EU Justice Sub-Committee at its meeting of 21 June. We would be willing to grant a scrutiny waiver in circumstances where the Government wishes to support a text in Council before the summer recess.

We have observed that, during the trilogue process, the European Parliament has sought to insert certain safeguards into this proposal. We regret that the Government has sought to resist these safeguards – particularly those relating to the proposed usage of the centralised system for purposes outside the use of criminal proceedings. We note that you are content that the current approach "does not limit usage of ECRIS-TCN in any way." We are concerned about this fact. We remind the Government that after Brexit UK citizens will become Third Country Nationals.

Nonetheless, we accept that the Government's assessment is that the new system would provide a "much more efficient mechanism for identifying where convictions of Third Country Nationals are held in the EU, than is the case now."

We ask that you keep us up to date with any developments in respect of this proposal. In particular, we request that you provide us with your assessment of how the proposal may support "third countries in understanding where criminal records information on TCNs is held in the EU." We would also ask for sight of the final Impact Assessment and Justice Impact Test as soon as they are available.

We look forward to a reply in due course.

21 June 2018

Letter from the Rt Hon Nick Hurd MP, Minister of State for Policing and the Fire Service

Thank you for your letter of 21 June. I am writing to provide an update on the progress of this dossier and respond to the questions in your most recent correspondence. I also enclose a copy of the Impact Assessment and Justice Impact Test in respect of ECRIS-TCN.

In terms of the progress on the agreement of the legal text in the trilogue negotiations, as I previously indicated, I had expected to see the dossier put forward for political discussion on a compromise solution at COREPER at the end of June and for agreement at Council, thereafter. This did not happen. However, I am grateful to your Committee for its willingness to provide a scrutiny waiver in the event the vote had taken place.

The compromise offered by the Presidency to the European Parliament (EP) appeared reasonable in terms of maintaining a high ambition for the fingerprint threshold, and compromising the approach on dual nationals. You may recall the compromise was that dual nationals would not be included for the time being, subject to further analysis carried out by the Commission. In the meantime, Member States would be able to check EU nationals in the central system to see if they also have a criminal record as a TCN. However, the EP's compromise was rejected by a qualified minority of Member States and as a result no agreement was reached in trilogues. The Bulgarian Presidency has now passed the ECRIS-TCN dossier to the Austrian Presidency to progress. The UK remains engaged in the discussions. In light of the above, it is difficult to assert with confidence how quickly the remaining issues will be resolved. I will keep you updated on developments.

In your letter, you raised concerns that the Government has sought to resist what your Committee has described as a 'safeguard' which would see the purposes under which the ECRIS-TCN centralised system, be made explicit. I am happy to further clarify my position: The EP's amendment sought to specify a limited number of "administrative purposes" for possible use of the data in the draft text. The UK resisted this – it does not amount to a safeguard against potential misuse of the system, including the misuse of UK national's data (as potential TCNs). Indeed, limiting the purposes for which criminal records information can be requested could reduce the circumstances under which certain agencies, in the course of their duties, could obtain crucial information on TCNs to protect the public, and as such I remain of the view that the EP's amendment on this should be resisted.

I will keep your Committee updated on the progress of ECRIS-TCN. In particular, I will keep you informed as to how the proposal may support third countries in understanding where criminal records information on TCNs is held in the EU, beyond what I already provided in my 8 June letter, as requested.

24 July 2018

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE IMPORT OF CULTURAL GOODS (11272/17)

Letter from John Glen MP, Minister for Arts, Heritage and Tourism, Department for Digital, Culture, Media and Sport

Thank you for your letter of 29 November 2017 concerning the above proposal, and I apologise for the delay in responding. I will address the points that you have raised in turn.

Exemption for the temporary admission of cultural goods for international loans to museums

This matter was raised at a meeting of the Customs Union Working Group meeting last month when Article 3.2 of the proposed Regulation was discussed. There was a general agreement between the Member States that international loans of cultural objects to museums should be outside the scope of the Regulation, and this was noted by the Presidency. The latest Presidency revision clarifies that the exemption would apply to cultural goods temporarily admitted for exhibition purposes.

Confirming the return of cultural goods admitted on temporary basis

The UK Government's understanding is that museum loans will be exempted from the proposed import controls. Loans entering and leaving the UK are currently subject to contractual, licensing and customs requirements which mean that their movements are monitored closely. Goods temporarily imported for sale at fairs or auctions would be subject to the same requirements (whatever these might eventually be) to demonstrate legal export from the source or exporting country as goods that were permanently imported. In view of this there would limited opportunity to use the temporary admission procedure to circumvent the import controls.

The UK Government is keeping under review the need for a new process designed to monitor the import and export of exempt goods, pending the finalisation of the proposed Regulation.

Concerns expressed by art market stakeholders about the proposal

The British Art Market Federation (BAMF) has expressed strong concern that the proposal, as currently worded, would have a severe impact on the British art market as it would introduce added formalities and paperwork for any works of art over 250 years old entering the EU. This would affect the UK more than any other EU member state because of the size of our art and antiques market and our dependence on cross-border trade. BAMF has also observed that this would create an unfortunate perception that the UK is a more complicated place for art sales and potentially hinder global competitiveness.

While BAMF's members are supportive of targeted measures aimed at tackling the illicit market, they are concerned that the proposal lacks precision and that the Commission is unclear about the problem that it is trying to address. BAMF has noted that the proposal would add administrative burden but, above all, would risk creating uncertainty for those sending works for sale in the UK. BAMF has observed that if, either because of delays in customs clearance or mistakes in the filling out of forms, objects being imported for sale were to be delayed at the border, the effect on the reputation of the

UK art market would be serious. Most sales, be them art fairs or auctions, are time critical. One or two instances of this would risk damaging the status of the UK as a major international art market hub. BAMF has also observed that it seems unrealistic to think that those involved in the illicit market, or the financing of terrorism, are likely to apply for import licences or to abide by the requirement for importer statements. They believe that it would be better to focus on measures that would be more effective in preventing the smuggling of objects, rather than burdening the legal art market with new regulations.

We will be sending a copy of this letter to BAMF.

The UK Government's position on the proposed Regulation

Our assessment is that the proposed Regulation could be significantly refined in order to be more effective. As it currently stands it potentially introduces significant administrative burdens without demonstrating a significant contribution to addressing the stated objectives. The general context for the proposed Regulation is the commitment to new measures on combating terrorist financing via illicit trafficking of cultural goods. We think it is important that the proposed Regulation should, first and foremost, combat any potential financing of terrorism and therefore focus should be on those cultural goods that are deemed to be most at risk for use for terrorist financing in order to be more effective and proportionate.

As part of its consideration of the proposed Regulation, and subsequent implementation, the UK Government is very conscious of the wider context of EU exit negotiations, the possibility of an implementation period and of the implications of the post exit relationship between the UK and EU.

4 January 2018

Letter from the Chairman to John Glen MP, Minister for Arts, Heritage and Tourism

Thank you for your letter of 4 January 2018 which was considered by the EU Justice Sub- Committee at its meeting of 23 January. We decided to retain the proposal under scrutiny.

We welcome your assurances about the proposed exemption for the temporary admission of cultural goods for international loans to museums and other exhibition purposes.

On the question of the impact of the Regulation on the art market more generally, we note the Government's frank view that the Regulation could be "significantly refined" in order to be more effective, as well as the concerns expressed by the British Art Market Federation. Is there any intention to conduct further consultation with stakeholders? The Government is very clear about the need for proportionate regulation and its desire for the focus to be on illicit trafficking that is used to finance terrorism.

One issue that you have not dealt with is our reference to the information note from the German delegation to the General Secretariat of the Council (and their suggestion that the Regulation is not sufficiently stringent to preclude the import of illicit cultural goods into the EU). It appears that there is a clear difference of emphasis between these two approaches. We would be grateful for an explanation.

We would ask the Government to keep us appraised of any developments relating to (a) the negotiation of this Regulation and (b) any further representations that it receives from interested stakeholders.

We look forward to a reply in due course once these issues have been clarified.

23 January 2018

PROPOSAL FOR A COUNCIL DECISION ON THE CONCLUSION, ON BEHALF OF THE EUROPEAN UNION, OF THE COUNCIL OF EUROPE CONVENTION ON THE MANIPULATION OF SPORTS COMPETITIONS WITH REGARD TO MATTERS NOT

RELATED TO SUBSTANTIVE CRIMINAL LAW AND JUDICIAL COOPERATION IN CRIMINAL MATTERS (11723/17)

PROPOSAL FOR A COUNCIL DECISION ON THE CONCLUSION, ON BEHALF OF THE EUROPEAN UNION, OF THE COUNCIL OF EUROPE CONVENTION ON THE MANIPULATION OF SPORTS COMPETITIONS WITH REGARD TO MATTERS RELATED TO SUBSTANTIVE CRIMINAL LAW AND JUDICIAL COOPERATION IN CRIMINAL MATTERS (11724/17)

Letter from the Chairman to Tracey Crouch MP, Minister for Sport and Civil Society, Department for Digital, Culture, Media and Sport

Thank you for providing Explanatory Memoranda, dated 15 December 2017, on the proposals relating to the Council of Europe Convention on the manipulation of sports competitions.

We have decided to retain these proposals under scrutiny.

We are writing to express our concern about your approach to the scrutiny of these EU documents, and to seek answers about the proposals, including in the context of Brexit.

Please treat this as a formal complaint. We are very disappointed by the poor handling of these scrutiny dossiers: the EMs were provided three months late, by which time you had decided not to opt in, hence denying the Committee the opportunity to express a view on the opt-in. Whilst DCMS has comparatively little involvement in EU matters, it should be familiar with its duties to Parliament.

We see from your correspondence with ESCOM that "lessons have been learned" and processes put in place to ensure that such errors are "never repeated". Please provide us with the full particulars.

We also pose the following questions about the proposals:

- Were the proposals to be accepted, what would be the implications of the UK having opted out of one but potentially being bound by the other?
- What are the implications of the ongoing debate over the EU's involvement in the Convention? When is it expected that individual EU Member States could become signatories to the Convention?
- When could the UK sign the Convention after it leaves the EU, i.e. could it sign during the transition period or would it have to wait until after that period had ended?
- If the UK did sign the Convention post-Brexit, and EU Members States were still unable to do so, what assessment have you made about the impact on the effectiveness of the Convention?

We look forward to your response within the usual ten days.

29 March 2018

Letter from Tracey Crouch MP, Minister for Sport and Civil Society

Thank you for your letter of 29 March on the proposals relating to the Council of Europe Convention on the manipulation of sports competitions.

The Committee expressed its very strong concern about the handling of these scrutiny dossiers and asked for details about what lessons have been learned by my Department. I should explain that my Department does not routinely deal with justice and home affairs matters related to opt-in decisions and so these scrutiny dossiers are an exception. The decision not to opt in was effectively to maintain the position taken for the previous proposals for signature (which remain unresolved) based on the same rationale but, of course, the way these dossiers have been handled is regretful. I sincerely apologise that this file has not been brought to the Committee's attention in a more timely manner.

Officials at my Department have now updated their operational framework to identify, record and effectively act upon any opt-in issues which arise at the earliest opportunity and in conjunction with the relevant government departments, such as the Home Office and Ministry of Justice. Officials are

ensuring that training for relevant staff also includes the framework for responding to JHA opt-in files, to ensure that this framework is followed consistently.

The Committee also asked a series of questions which I am happy to respond to as follows:

Were the proposals to be accepted, what would be the implications of the UK having opted out of one but potentially being bound by the other?

We do not believe that there would be any implications. The UK already has an effective framework in place to combat instances of match-fixing and manipulation in sports competitions and this involves cooperation with a range of international partners. This cooperation is based on well-defined arrangements already in place between, amongst others, our sports bodies, the Gambling Commission and law enforcement agencies and their overseas counterparts. We do not anticipate the nature of these arrangements changing as a result of these proposals regardless of whether we are potentially bound by one and have opted out of the other. It is important to reiterate, though, that these proposals, like the previous proposals for signature, remain unresolved. It is still the UK's contention that the EU has not established exclusive competence for any parts of the Convention. No comprehensive and detailed analysis has been prepared on its behalf and the 2015 Decisions have not been adopted.

What are the implications of the ongoing debate over the EU's involvement in the Convention? When is it expected that individual EU Member States could become signatories to the Convention?

As reflected in the Explanatory Memorandum (EM) that was submitted to your Committee, there is currently no ongoing debate over the EU's involvement in the Convention. The current position is one of stalemate given that all proposals related to the EU's involvement in the Convention remain unresolved with no further negotiations scheduled, nor timeline for adoption at Council in place. However, individual EU Member States are able to become signatories to the Convention, with just over 20 Member States having already signed.

We believe that until the extent of the EU's involvement has been resolved, Member States who are signatories cannot ratify (implement) the Convention without breaching the 'Duty of Sincere Co-operation', and this view has also been expressed by the European Commission. Although currently three Council of Europe States Parties have ratified the Convention, the Convention itself does not enter into force until at least five States Parties have done so. This EU stalemate is causing a delay to this process. The Council of Europe is not being complacent, however, and has established the "Group of Copenhagen" which is essentially a network of States Parties' National Platforms to strengthen transnational cooperation and dialogue until such time that the Convention enters into force. The UK is represented on this Group by the Gambling Commission.

When could the UK sign the Convention after it leaves the EU, i.e. could it sign during the transition period or would it have to wait until after that period had ended?

As stated above, there is currently no impediment to the UK signing the Convention and, as reflected in the EM, the Government has made a public commitment to sign the Convention by the end of 2018.

If the UK did sign the Convention post-Brexit, and EU Members States were still unable to do so, what assessment have you made about the impact on the effectiveness of the Convention?

As mentioned above, over 20 EU Member States have signed the Convention but have not been able to implement it as the EU's involvement remains unresolved. However, through steps that the Council of Europe is taking, such as establishing the Group of Copenhagen, we can see that the Convention's existence is already having an effect before it formally enters into force.

It is important to reiterate that the UK already has an effective framework in place to combat the threat of match-fixing and manipulation in sport. The approach we take here in the UK is seen as a model of best practice internationally. However, we can never be complacent. That is why the UK participated in the negotiations which led to the establishment of the Convention as we saw it as a potentially powerful tool to help raise the standards of other countries and potentially strengthen

coordination amongst international partners. We are seeing the benefits of that starting to emerge through the work of the Group of Copenhagen.

I have noted that the European Union Committee has decided to retain these proposals under scrutiny and would like to reiterate that the Government has itself placed a scrutiny reservation on the texts which remains in place.

I am happy to keep you and the Committee updated on any further developments that take place on these scrutiny dossiers.

18 April 2018

Letter from the Chairman to Tracey Crouch MP, Minister for Sport and Civil Society

Thank you for your letter dated 18 April 2018, which was considered by the Committee at its meeting on 15 May.

We have decided to retain under scrutiny the proposals in Doc. 11723/17 and Doc. 11724/17, relating to the EU ratifying the Convention. (We note that the proposals in Doc. 6720/15 and Doc. 6721/15, relating to the EU signing the Convention, have not progressed and remain under scrutiny.)

We accept your apology for failing to update us in good time and for overriding the scrutiny reserve resolution. We welcome the improvements in processes and training that have been implemented by your officials, and also the improved communication from your officials to our staff.

Thank you for the explanations that you provided about the current status of the proposals, the parallel efforts by the Council of Europe through the Group of Copenhagen, and the implications for the UK's work in this area. We have no further questions at this time.

We ask that you write in due course to provide us with an update if there are any developments relating these proposals.

22 May 2018

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON COMBATING FRAUD AND COUNTERFEITING OF NON-CASH MEANS OF PAYMENT AND REPLACING COUNCIL FRAMEWORK DECISION 2001/413/JHA (12181/17)

Letter from the Rt Hon Ben Wallace MP, Minister of State for Security and Economic Crime, Home Office

Thank you for your letter of 20 December 2017 in which you ask for an update about the Government's decision in relation to opting in to this Directive.

I have today placed a Written Ministerial Statement before Parliament, announcing the Government's decision that the UK will not opt in to the Directive on combating fraud and counterfeiting of non-cash means of payment and replacing Council Framework Decision 2001/413/JHA.

As set out in the WMS, our reasons for this decision are that the UK's domestic legislation is already largely compliant with the Directive's measures, and in relation to the offences and sentences set out in the Directive, the UK already goes much further. Therefore it is unlikely that opting in would enhance the UK approach to tackling fraud.

The UK has worked closely with other EU Member States to tackle fraud, and we will continue to do so even though we are not opting in to this Directive. We will also continue to play a part in negotiations on this Directive, in support of effective international cooperation.

18 January 2018

Letter from Sam Gyimah MP, Minister of State for Universities, Science, Research and Innovation, Department for Education and Department for Business, Energy and Industrial Strategy

I am writing to update you on the progress of negotiations on this file.

Progress to date

Under the Estonian Presidency, the Council made significant progress on the Directive on Copyright in the Digital Single Market, in particular in the areas of exceptions and licensing.

The Bulgarian Presidency has now held working groups on the remaining issues and is aiming to secure enough progress in Council to allow informal trilogue discussion to begin under the Austrian Presidency. An overall agreement is envisaged before the end of 2018. We will provide the Committee with further updates as the negotiations progress.

On the majority of issues, the Council text is relatively stable and amendments have been positive and in line with the UK's negotiating position. The two main issues which are outstanding, and which remain subject to detailed Council discussions are proposals for a **press publishers' right** and proposals to address the **"value gap"** (more details on these follow below).

Key issues

Exceptions to copyright

Good progress has been made on the issue of exceptions to copyright with broad agreement being reached between Member States on harmonised exceptions for text and data mining, cross-border digital use of educational materials, and preservation.

The UK raised the issue that the Commission's proposals could unduly restrict the flexibility Member States currently have to provide exceptions at national level. The latest Council draft includes text which expressly preserves the freedom of Member States to provide other exceptions at national level for similar purposes as those in the Directive.

The Council text is still under discussion, but the Government believes it strikes the right balance in this area.

Digitisation of out-of-commerce works

The UK has supported this element of the Directive, which is designed to make it easier for cultural heritage institutions to use out-of-commerce copyright works by creating a legal mechanism for them to be licensed via collective management organisations (non-profit bodies representing right holders). The UK has achieved a number of amendments which will streamline the proposed mechanism, while ensuring that right holders retain adequate protection and the ability to retain control of how their work is used.

Extended collective licensing

The UK, along with certain other Member States, has successfully pushed for the introduction of a new Article to the Council text which would clarify the status of so-called Extended Collective Licensing (ECL) systems in EU law. ECL, which allows collecting societies, in certain circumstances, to license large volumes of works on an opt-out, rather than an opt-in, basis was introduced to the UK in 2014 and has long been used in the Nordic countries to support rights clearance. The new Article sets out appropriate checks and balances, while retaining Member States' discretion over whether or not to implement ECL.

Fair Remuneration (transparency and contract adjustment)

The UK has supported the proposals to ensure that creators receive regular information on the use of their works and revenue generated. On the proposals to give creators access to a contract adjustment mechanism where they feel their remuneration has been disproportionately low, the UK has argued to retain some flexibility in how this is implemented in Member States. In particular, we have sought to

give protection to existing collective bargaining arrangements in the UK, which (particularly in the broadcasting sector) have proved successful in addressing imbalances between creators and producers. The most recent Presidency text makes significant progress in this direction, and would ensure that successful negotiated agreements in the UK could continue to operate.

Negotiation mechanism for video-on-demand platforms

This measure, which requires Member States to introduce a mechanism to facilitate negotiations relating to EU audiovisual works on video-on demand (VoD) platforms, is a relatively minor part of the overall package. Our aim, shared by many Member States, has been to ensure that it is light touch and does not give rise to unnecessary administrative burdens.

Press Publishers' Rights

The Council has been split on the issue of new rights in press publications online, and this has been one of the main obstacles to agreeing the Directive. Options under discussion have been:

a. a new right in press publications, in addition to existing rights;
b. a presumption that publishers can license and enforce certain rights belonging to journalists; and,
c. no new rights for press publishers.

The Government seeks an improved position for press publishers in the value chain, recognising the challenges that the sector faces in the digital environment, via an intervention which is clear and proportionate and does not unduly impact the digital sector or user freedoms online. In light of Council discussions, the Government's view is that the first option, a new right for press publishers, is the most likely to have this impact, and it is working to ensure that the right is both targeted and effective.

A consensus in favour of the press publishers' right appears to be emerging in the Council, but there remains disagreement on the detail of the right's scope and duration, and the use of extracts and hyperlinks.

Value Gap

The value gap proposals aim to ensure that, when content is uploaded to content sharing services like YouTube, without permission from right holders, it is either removed or right holders are paid for its use.

The Government is of the view there should be greater clarity in the law in this area, and ensure that service providers take greater responsibility for works which their users upload, while ensuring that any intervention is proportionate and does not impose unreasonable burdens on service providers.

Negotiations in Council have progressed slowly, owing to the technical complexity of this area and its interaction with other legislation, notably the E-Commerce Directive. There is now a majority view among Member States, including the UK, that to properly deal with issues in this area it should be clarified that there are circumstances in which a service may be liable for making available content uploaded to its service by its users, as well as the users of the service themselves.

The Commission's original proposal was silent on this issue, and merely sought to impose greater obligations on service providers to filter content through the deployment of technical measures.

While there has been some disagreement as to how this should be achieved, the Directive now includes:

- A stand-alone definition of 'online content sharing service provider' which seeks to target changes only to services involved in the 'value gap' issue;
- A clarification as to when a service provider may be communicating or making available to the public a copyright work, and therefore liable for infringement;
- A clarification that an service provider will not be eligible for the protections granted by the E-Commerce Directive in such circumstances;
- A method of mitigating any liability through the deployment of measures which identify and remove content when notified by a rightsholder;

- A focus on proportionality in the deployment of measures, recognising the relative size and scale of the service provider, the type of copyright work in question, and the technical viability of deployment; and
- A role for the Commission in developing best practice and guidance on when and how technical measures should apply.

This has been a controversial issue, and there has been a broad spread of different views from Member States, ranging from strong support to scepticism. Further refinement will occur as the measure is considered at the political level. However, we believe that the negotiations have been fruitful, and that the basis for a compromise has been reached which will allow targeted action to appropriately address issues in the online value chain, without introducing undue burdens on digital businesses or stifling innovation.

Costs, benefits, and impact

The European Union published a full impact assessment for this legislation on 14 September 2016 (Document SWD(2016) 301), and this was summarised in the Government's Explanatory Memorandum.

In accordance with usual practice, the UK Government will undertake its own impact assessments as and when these measures are implemented into UK law.

UK alignment post-Brexit

The date when the Directive might be adopted, and its potential transposition deadline are currently unclear. For the planned implementation period to function effectively, the UK will need to remain in step with the EU during that time. Therefore, should the transposition deadline fall within the implementation period, it will be necessary to implement the Directive in UK law. The status of the Directive in the UK following the implementation period will partly depend on the terms of our Future Economic Partnership with the European Union.

Should the UK's aims, as outlined above, be met, the Government would wish to vote in favour of the proposal at any future Council meeting, either under the Bulgarian or Austrian Presidencies. I would be grateful for your consideration of this matter.

30 April 2018

Letter from the Chairman to Sam Gyimah MP, Minister of State for Universities, Science, Research and Innovation

Thank you for your letter dated 30 April 2018, which was considered by the EU Justice Sub-Committee at its meeting of 5 June.

We decided to retain the proposal under scrutiny.

In October 2016 following the result of the EU referendum, we noted your conclusion that the provisions of the Commissions' proposal were to large extent already consistent with the UK's national copyright framework. We therefore undertook to adopt a light-touch approach to our scrutiny of this matter.

We are grateful to you for fulfilling our request for a summary of the Council's negotiations of this matter and note your conclusion that two issues remain subject to detailed discussion: (i) press publishers' rights, and (ii) the so-called value gap. We take this opportunity to endorse your approach to the resolution of both issues and, with regard to the latter, welcome your detailed analysis of the problem.

Your response, however, to the domestic issues we raised in 2016 (a cost/benefit analysis of the proposal's impact on the UK and the potential for UK alignment with the proposal's provisions post-Brexit) is less satisfactory. On the cost/benefit analysis, we fear that your promise to undertake such an analysis "as and when these measures are implemented into UK law" is too late. With regard to any potential UK alignment post-Brexit, your response echoes the now familiar (but disappointing) mantra that such issues are subject to the outcome of the negotiations with the EU27 on the UK's future relationship.

We look forward to receiving, in due course, your update on the Council's resolution of the two outstanding issues highlighted in your letter.

5 June 2018

Letter from Sam Gyimah MP, Minister of State for Universities, Science, Research and Innovation

Thank you for your letter of 5 June 2018, in which you seek an update on the Council's resolution of the Press Publishers' Right, and Value gap.

Mandate for Negotiations with the European Parliament

Subsequent to my previous letter, the Bulgarian Presidency has now secured enough progress in Council to allow informal trilogue discussions with the Commission and the Parliament to begin under the Austrian Presidency on the basis of the text at **Annex A**[1], put to Member States on 25 May 2018.

Press Publishers' Rights – Article 11

As mentioned in my previous letter, the Government seeks an improved position for press publishers in the value chain, and has supported a new right for press publishers as the option under discussion which is most likely to have this outcome. Following discussions in the Council about how such an outcome could be achieved, the majority of the Council have also moved to back the creation of such a new right.

However, the Council has been split on how the scope of such rights should be determined, in particular the circumstances under which small extracts should be included in the scope of the right. There were two options on the table:

- An approach based on an originality standard. This would mean that the right subsists in extracts which reflect the 'author's own intellectual creation' and not in extracts which do not exhibit such creativity; and
- An approach based on a quantitative assessment. This would mean that the right subsists in extracts of sufficient size to affect the investment by the press publisher, but not in individual words or very short excerpts.

Under the agreed mandate, Member States will have the ability to decide which of these standards of protection they wish to adopt when implementing the press publisher's right domestically. While the Government believes that a more harmonised approach in this area would have been desirable, we believe the agreed compromise is acceptable. It gives the UK the flexibility to implement Article 11 in a manner which will improve the position of press publishers in the online value chain in a balanced way, while preserving the ability for internet users to use short extracts from news articles for purposes such as quotes and hyperlinks.

You should also note that the territorial application of Article 11 has now been amended so that it only applies to businesses established in a Member State of the EU. This is a standard practice for EU-specific related rights, and is also the case for the EU's database right. It will mean that the continued application of the Press Publisher's Right for UK businesses operating in the EU after the UK's exit will be subject to negotiations on the Future Economic Partnership.

Value Gap – Article 13

As discussed in my previous letter, Article 13 seeks to clarify that there are circumstances under which an online service provider may be "communicating to the public" works uploaded by its users and is therefore liable for copyright infringement. The current uncertainty in the law has led to a situation where rightsholders are unclear whether or not a service provider is liable for content uploaded by users of the service without the rightholders' permission, affecting licensing negotiations between rightholders and service providers, and potentially reducing the value of any licences agreed with them. By clarifying that there are circumstances under which a service provider will be liable, we hope to provide clarity to both rightsholders and service providers about when licensing agreements are necessary. This will help ensure that, when content is uploaded to content sharing services like

[1] Not published here.

YouTube, without permission from right holders, it is either removed or right holders are paid for its use.

Giving service providers blanket liability for user uploaded content is problematic from a technical and practical standpoint, as service providers will not always know whether or not a work has been uploaded without permission and even the best technology will not always be able to detect illegal uploads. We therefore consider that service providers should be able to mitigate their liability through the deployment of measures to detect and remove unlicensed content. Where service providers make best efforts, using these measures, to prevent the availability of works, they will not be held liable for works which become available on the service despite these efforts.

The measures must be effective, but also proportionate according to a number of factors as noted in Article 13 (5) of the draft Directive. The phrase 'best efforts to prevent the availability of the specific works or other subject matter identified by rightsholders' also refers to such proportionality, as it acknowledges that it may not be technically or practically possible to prevent availability in every case.

The Government believes that the provision meets the Government's objective of clarity and legal certainty through the combination of the factors set out in Article 13(5) and Recital 38e, and the dialogue and guidance described in Article 13(8).

Article 13(5) and Recital 38e set out the factors which will determine the extent to which a provider is expected to implement measures. For example, one factor is the size of the service. Recital 38e explains that small and micro enterprises should be be subject to less burdensome obligations than larger enterprises. In some cases, for example where technology to detect certain types of work is very expensive, it may not be proportionate to require small and micro businesses to implement it and they should only be expected to remove unauthorised works upon notification by rightholders.

Article 13(8) establishes dialogues with service providers, rightholders and other stakeholders, which would help to assess the effectiveness and proportionality of measures, and enable the Commission to issue guidance on their application in different circumstances. The guidance should provide sufficient clarity to service providers of different types about the measures they are expected to implement and what "best efforts" might look like in practice, while the stakeholder process should ensure that the guidance keeps up with changes in technology and business practice.

The Government pushed for inclusion of both the factors in paragraph 5 and the guidance in paragraph 8, and we believe that together these will help to provide the clarity sought as part of the Government's negotiating mandate.

Additionally, the Government recognises it is important to ensure that measures aimed at protecting copyright do not come at the expense of the freedoms of internet users, including the legitimate use of copyright protected works under copyright exceptions and limitations. To that end, the Council's text includes a number of measures and obligations to ensure that important freedoms, including freedoms of expression and information, are upheld.

The text is explicit that the measures taken by online service providers are without prejudice to fundamental rights, in particular the rights to privacy and protection of personal data (outlined in recital 46), and the existing limitations and exceptions to copyright, and in particular those which guarantee freedom of expression, such as exceptions for news reporting, quotation and parody. To ensure this, there is a requirement for online service providers to provide a complaints and redress mechanism to consider disputes regarding how measures are used (Article 13 (7)). We believe this will allow internet users to highlight instances where measures are being applied incorrectly, including where a copyright protected work is used legitimately under an exception. Furthermore, the proposed Commission guidance on the implementation and proportionality of measures will give stakeholders, including those user organisations who voiced concerns about user freedoms and privacy, the opportunity to explore ways to ensure that service providers meet these obligations.

Overall, I believe that Article 13 represents a pragmatic way of dealing with the value gap issue whilst recognising the complexity of the law in this area, the needs of users, and the importance of the digital economy. However, you should be aware that these issues have been of considerable interest to the European Parliament, and there is likely to be a continued focus on them during the trilogue process.

Costs, benefits, and impact

I regret that the Committee did not find my explanation of the impact of the proposals fully satisfactory.

To expand on my previous comments, in accordance with the Better Regulation Framework Principles, and the normal practice for the transposition of Directives, the Government would intend to carry out an impact assessment as and when the measures are transposed into UK law. Such an impact assessment would be considered by the Parliamentary Regulatory Policy Committee, and informed by a public consultation.

While I note your concern that the timing of such an analysis would be "too late", it would not be possible to prepare an informed cost/benefit assessment at this stage, as the final text of the Directive is subject to further negotiations between Council, Commission, and European Parliament.

As previously mentioned, the European Commission published a full impact assessment for the Directive as proposed, and this was summarised in the Government's Explanatory Memorandum.

Next Steps

The European Parliament is due to vote on its own amendments to the Copyright Directive in late June in preparation for informal trilogue discussions. The Government will monitor developments closely, and would anticipate voting in favour of an agreement which meets the objectives set out in our previous correspondence. I would be grateful for your consideration of this matter.

27 June 2018

Letter from the Chairman to Sam Gyimah MP, Minister of State for Universities, Science, Research and Innovation

Thank you for your letter dated 27 June 2018, which was considered by the EU Justice Sub-Committee at its meeting of 24 July.

We decided to retain the proposal under scrutiny.

As you know, in October 2016 we noted the Government's view that the provisions of the Commission's proposal were to a large extent already consistent with the UK's national copyright framework, and we undertook to adopt a light-touch approach to our scrutiny of this matter. We are very grateful for your detailed and thorough analysis of the outcome of the Council's discussion of the two issues that remained subject to ongoing negotiation: (i) press publishers' rights; and (ii) the so-called value gap. We also note your explanation for the Government's decision to undertake a cost/benefits analysis if, and when, these measures are implemented into UK law.

We look forward to receiving, in due course, your update on the outcome of the trilogue's discussion of this matter.

24 July 2018

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL LAYING DOWN RULES ON THE EXERCISE OF COPYRIGHT AND RELATED RIGHTS APPLICABLE TO CERTAIN ONLINE TRANSMISSIONS OF BROADCASTING ORGANISATIONS AND RETRANSMISSIONS OF TELEVISION AND RADIO PROGRAMMES (12258/16)

Letter from the Chairman to Sam Gyimah MP, Minister of State for Universities, Science, Research and Innovation

Thank you for your letter of 15 December 2017 which was considered by the EU Justice Sub-Committee at its meeting of 27 February. We decided to retain the proposal under scrutiny.

We note that the scope of the Regulation relating to the country of origin rule may be reduced further, and that in those circumstances the Government would wish to vote in favour of the proposal in any subsequent Council meeting under the Bulgarian Presidency.

We ask that the Government keep us updated about any substantive developments on the country of origin rules. In the event that a vote were to take place earlier than expected, we may be willing to grant a scrutiny waiver at short notice.

We look forward to a reply in due course.

1 March 2018

Letter from Sam Gyimah MP, Minister of State for Universities, Science, Research and Innovation

Thank you for your letter of 01 March 2018, in which you indicate that you may be prepared to grant a scrutiny waiver in relation to the above file. I am writing again to seek a waiver from you in order to vote on this file.

To date the Bulgarian Presidency has not sought a General Approach, but has entered into informal trilogue discussions based upon a proposal developed by the former Estonian Presidency.

As foreshadowed in my predecessor's letter of 15 December 2017, the proposal developed by the Estonian Presidency seeks to limit the "country of origin" rule to programmes which are news and current affairs, or those fully financed and controlled by a broadcasting organisation. The current Presidency is also seeking further safeguards in relation to internet retransmission services, such that they need provide a level of security comparable to that which exists over managed networks.

The European Parliament seeks a country of origin rule which is limited to news and current affairs, applying to a very narrow amount of audio visual content. As my predecessor stated, a narrowing of scope of country of origin can help to protect the well-established practice of territorial licensing in the sector, which is the aim of the Government. The European Parliament also supports safeguards on internet retransmissions, and differences in terminology are expected to be resolved through the trilogues.

Additionally, the European Parliament has sought to include new provisions relating to 'direct injection', a technical method of broadcast where a broadcaster allows a service provider to access and transmit the signal directly to a different audience. Case law has shown this method of broadcast to be one communication to the public with one payment due to the right holder.

The European Parliament would like to include direct injection in the Regulation, either as a form of retransmission or with a model of joint liability for the copyright clearance, to assist rights holders who may struggle to negotiate terms or obtain the relevant payment. The Council and Commission have resisted the inclusion due to a lack of evidence about the potential impact. The Government agrees with the latter approach and believes that this Regulation is not the place to introduce a new copyright principle such as this.

The Bulgarian Presidency has scheduled a final trilogue for 17 April, and should this prove successful, we would expect the results to be put to a Council vote shortly thereafter. As per my predecessor's letter of 15 December 2017, should the trilogues establish a text which protects territorial licensing, and meets the Government's negotiation objectives, the Government would wish to vote in favour in any subsequent Council meeting under the Bulgarian Presidency.

In terms of the entry into force of the Regulation, this has yet to be established; however, we would not expect it to exceed 18 months. Consequently, we would expect the Regulation to enter into force during the implementation period established by the Withdrawal Agreement. As previously, our alignment with the Regulation post-implementation period will depend on the terms of our future economic partnership with the European Union.

6 April 2018

Letter from the Chairman to Sam Gyimah MP, Minister of State for Universities, Science, Research and Innovation

Thank you for your letter of 6 April 2018. It was considered by the EU Justice Sub-Committee at its meeting of 17 April.

We note that you had previously raised the possibility of a Council vote, and are content to grant a scrutiny waiver as requested.

17 April 2018

REGULATION (EU, EURATOM) 2018/673 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 3 MAY 2018 AMENDING REGULATION (EU, EURATOM) NO 1141/2014 ON THE STATUTE AND FUNDING OF EUROPEAN POLITICAL PARTIES AND EUROPEAN POLITICAL FOUNDATIONS (12308/17)

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING REGULATION (EU, EURATOM) NO. 1141/2014 OF THE EUROPEAN PARLIAMENT AND THE COUNCIL OF 22 OCTOBER 2014 ON THE STATUTE AND FUNDING OF EUROPEAN POLITICAL PARTIES AND EUROPEAN POLITICAL FOUNDATIONS OPINION OF THE EUROPEAN COURT OF AUDITORS (16004/17)

Letter from the Chairman to Chloe Smith MP, Minister for the Constitution, Cabinet Office

Thank you for your Explanatory Memorandum dated 29 January 2018 which was considered by the EU Justice Sub-Committee at is meeting of 27 February. We decided to clear the Court of Auditors Opinion from scrutiny. However, we are writing in respect of the underlying Regulation on the statute and funding of European political parties which we retain under scrutiny.

The Government was well aware of our views about its position on the proposal for the publication of gender diversity data by national political parties. In December 2017 we wrote indicating that we remained "mystified by the Government's negative stance on the proposal for the publication of gender diversity data." At that time, we stated that the publication of this data was a matter of public interest. We added that given that it is essentially public money that is being provided to European Political Parties we saw no reason why this should only be done on a voluntary basis.

In previous correspondence with the Committee the Government accepted that any regulatory burden on parties would be small and that UK political parties would only be affected for a short period of time. We understood that the UK Government "would not seek to raise major concerns about this point"; but that it would be seeking clarification on the drafting of the proposal and that it intended to discuss it with political parties. We were therefore surprised and disappointed to receive notice that the Government appears to be endorsing revisions to the text which would remove the reference to national political parties needing to provide the relevant diversity information.

On 6 February the Prime Minister gave a speech at Westminster Hall marking the centenary of the introduction of votes for women. During the course of her speech, she said that she wanted "to see

more women in politics and government because greater female representation makes a real difference to everyone's lives." It is difficult to see how the approach pursued by the Government aligns with this aim: in truth it seems to run completely contrary to such an ambition.

We look forward to your response to this letter and our previous correspondence on this issue in ten days.

27 February 2018

Letter from Chloe Smith MP, Minister for the Constitution

Thank you for your letter of 27 February regarding the above document, which is currently retained under scrutiny.

You previously exchanged correspondence with my predecessor on this and I last provided an update to the Committees through an EM on the European Court of Auditor's Opinion on the proposal which you cleared (EM 16004/17).

Your recent letter focuses on the issue of the proposal for the publication of gender diversity data by national political parties. The Government is not opposed to the publication of such data, indeed we are committed to encouraging political parties to publish this information, but we do not think that introducing legislative requirements is the right approach. Our response to the Women and Equalities Committee Report on Women in the House of Commons (Cm 9492) sets this out.

As we have decided not to go down the route of legislative requirements nationally, we had reservations about such an approach at EU level. That does not mean that we do not support or encourage the publication of such data.

Other Member States also had concerns about this requirement which were raised during discussions at Working Group.

Since my previous EM on this there has been fast progress and a provisional agreement has now been reached between the Council and the European Parliament. I attach in confidence two limité documents. One sets out the Presidency debriefing on the outcome of the trilogue and analysis of the final compromise text with a view to agreement. The other contains the full compromise text. The attached[2] documents are being provided to the Committee under the Government's authority and arrangements agreed between the Government and the Committee for the sharing of EU documents carrying a limité marking. They cannot be published, nor can they be reported on in any way which would bring detail contained in the documents into the public domain.

As you will see, the compromise text says 'the inclusion of information on gender balance in relation to each of the member parties of the European political party should be encouraged.' The Government endorses this approach.

I also wanted to update you on one further change, which may be of interest. Your letter to my predecessor of 15 November 2017 noted that the proposed funding formula appeared to favour larger EUPPs. The present system distributes 15% of the total funding equally amongst all eligible parties, with the remaining 85% distributed in proportion to each party's share of elected Members. As you know, the initial draft changed this to distribute 5% equally and 95% in line with representation, to better reflect parties' democratic mandate.

You will see that two changes have since been agreed to the proposal. The first is the amendment so that 10% would be distributed equally amongst political parties and 90% in proportion to their representation. The second is a requirement for the European Parliament to publish a report on the application of the Regulation by 31 December 2021, and a report of the Commission no more than six months after this, which must pay particular attention to the implications for the position on small European political parties and foundations.

The aim is for the new provisions to enter into force by 30 June 2018, and be applicable in 2019 financial year, ahead of the upcoming European elections. In view of this, progress has been made quickly with the European Parliament and Council rapidly reaching agreement, and it was on the agenda of COREPER

[2] No published here.

on Wednesday 7 March. It is then likely to be voted on in the European Parliament at its April Plenary. After this, Council will look to finalise its agreement to the text.

I therefore hope this update will allow you to lift your scrutiny reserve on the proposal to enable the UK to support the proposal.

15 March 2018

Letter from the Chairman to Chloe Smith MP, Minister for the Constitution

Thank you for your letter dated 15 March 2018 which was considered by the EU Justice Sub-Committee at its meeting of 27 March. In the light of your request, and due to the tight timetable that you anticipate, we decided to waive the scrutiny reserve ahead of the Council's imminent agreement of this matter.

We remain perplexed by the Government's negative stance on the proposal for the publication of gender diversity data. This is particularly disappointing given the Prime Minister's stated desire to encourage female representation in Parliament.

You referred the Committee to an earlier Government response to the Women and Equality Committee's report on Women in the House of Commons. The relevant extract was not enclosed but we presume that you are referring to their recommendation that the statutory requirement for political parties to publish their parliamentary candidate diversity data for general elections, as set out in Section 106 of the Equality Act 2010, should be brought into force immediately.

The Government's response to that Committee's recommendation was that this requirement would impose a potentially onerous regulatory burden on smaller parties. This position is at odds with the Government's earlier acknowledgement to us that any regulatory burden on parties from the proposal that we are scrutinising would be small, and that UK political parties would only be affected for a short period of time.

The proposal is not one for quotas or targets. If such minor administrative requirements are considered by the Government to be a 'regulatory burden', it is hard to imagine how significant improvements in selecting more diverse candidates will ever be achieved.

What efforts were made to assess the feasibility of the proposal and the burdens that would have been placed on smaller political parties?

Moreover, the Government's response does not engage at all with our point that the publication of this data is a matter of public interest as it is essentially public money that is being provided to European Political Parties. Hence, we see no reason why this should only be done on a voluntary basis.

We look forward to your response after the Council agrees this proposal.

29 March 2018

Letter from Chloe Smith MP, Minister for the Constitution

Thank you for your letter of 29 March 2018 in which you agreed to waive scrutiny of the Regulation on the Statute and Funding of European Political Parties and Political Foundations.

The written procedure relating to the adoption of the Regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) No 1141/2014 on the statute and funding of European political parties and European political foundations was completed on 26 April 2018, with all delegations agreeing. The Regulation entered into force on 3 May 2018 when it was published in the Official Journal.

In response to your questions about the Government's position on the publication of gender diversity data by political parties, the Government had reservations about a legislative requirement for publication of this data at an EU level given we have decided against this approach at the UK level. This is even though we anticipated any regulatory burden imposed by the EU regulation on political parties to be small.

The Government retains the view that political parties should be transparent about the diversity of their candidates and continues to encourage the voluntary collection of diversity data on candidates.

25 June 2018

Letter from the Chairman to Chloe Smith MP, Minister for the Constitution

Thank you for your letter dated 25 June which was considered by the EU Justice Sub-Committee at its meeting of 3 July. We decided to clear the proposal from scrutiny. In doing so, we note the Government's continued failure to provide any reasonable justification for its position on the publication of gender diversity data. This is regrettable, particularly in the year that we celebrate the centenary of female suffrage.

We do not expect a reply to this letter.

3 July 2018

PROPOSAL FOR A INTERINSTITUTIONAL AGREEMENT ON A MANDATORY TRANSPARENCY REGISTER PLUS ANNEXES TO THE PROPOSAL (12882/16)

Letter from the Chairman to the Lord Callanan, Minister of State for Exiting the European Union, Department for Exiting the European Union

Thank you for your letter dated 21 December 2017. It was considered by the EU Justice Sub-Committee at its meeting of 23 January 2018.

We decided to retain the proposal under scrutiny.

Once again we find ourselves considering another example of this Government's poor handling of Parliamentary scrutiny.

We are disappointed that you have taken a year to update us on this proposal's progress through the Council. Please inform us why you have taken so long to update us? Your failure is exacerbated by your confirmation that in December the Council agreed its negotiating mandate. Whilst this is not technically an override of the scrutiny reserve resolution, the UK Government, as a member of the Council, is now committed to the position agreed by COREPER. This is against the spirit of the scrutiny reserve resolution and you have deprived this Committee of any opportunity to comment on and/or explore with the Government any changes to this proposal; in particular, the narrowing of its application to the Council.

With regard to the substance of this amendment, you explain that in June 2017 the Council agreed to narrow the register's application (to itself) so that "third party interactions with Member State Ambassadors and COREPER deputies" are removed. Later on in your letter, when commenting on the European Parliament's position, you say that the Government shares its view that the register should enjoy the "widest possible scope of application" to the EU's institutions, including "meaningful participation by the Council". In the Government's opinion, is the narrowing of the proposal's scope by the Council compatible with your view, and the European Parliament's, that the register should enjoy the "widest possible scope of application"?

Turning to the Council's negotiating mandate which you have shared with us on a limité basis. Given that the documents are now publically available on the Council's website, can you explain why you have imposed this restriction on the Committee?

We look forward to receiving your response within the usual 10 day deadline.

23 January 2018

Letter from the Lord Callanan, Minister of State for Exiting the European Union

Thank you for you letter of 23 January regarding the Commission's proposals for an inter-institutional agreement on a transparency register and confirming that the Committee have decided to keep the proposal under scrutiny.

I would like to reassure you that we remain committed to keeping Parliament updated on ongoing EU business. I will be laying an EM in Parliament on the draft Decision (15336/17) shortly. With regard to the limité marking on the Coreper negotiating mandate, I apologise that it had not been removed due to an administrative oversight.

Regarding the Council's participation in the register, the Government considers that the revised proposal still constitutes meaningful Council participation. While the scope of the register could be wider (to require prior registration for access to Member State Permanent Representations, for example), this could impose unnecessary restrictions on the everyday conduct of business. Additionally, the Council, by removing the application to Permanent and Deputy Permanent Representatives, does not strictly, limit the application of the register itself, rather it prevents the register from applying to Member States without their express opt-in.

As you will be aware, Article 13 in the latest version of the Commission proposal sets out that Member States are encouraged "to make certain interactions of their respective Permanent Representative and Deputy Permanent Representative with interest representatives conditional upon registration of such representatives in the Transparency Register, when holding the Presidency of the Council." Given the UK will not hold the Presidency before our exit from the EU, this Article will not apply to the UK.

The Bulgarian Presidency held an informal meeting on 29th January with the European Parliament and the Commission to agree a way forward for tripartite discussions. We will update the Committee once tripartite discussions progress.

5 February 2018

Letter from the Chairman to Lord Callanan, Minister of State for Exiting the European Union

Thank you for your letter dated 5 February 2018. It was considered by the EU Justice Sub-Committee at its meeting of 20 February 2018.

We decided to retain the proposal under scrutiny. We note your reassurance that the Government remains committed to Parliamentary scrutiny, nevertheless, that does not change the fact that in this instance your failure to update us on the Council's discussion of this matter meant that we were unable to fulfil our responsibility to scrutinise this proposal; we would ask you to explain what went wrong on this occasion.

On the issue of substance, the narrowing of the Register's scope, we note your view that the text agreed by the Council in December still applies to "meaningful Council participation".

We look forward to considering your response to this letter within the usual 10 day deadline and your Explanatory Memorandum on document 15336/17.

22 February 2018

Letter from Lord Callanan, Minister of State for Exiting the European Union

Thank you for your letter of 22 February. The delay in updating the Committee on this proposal was due to internal changes within the Department. I would like to reassure you that my Department is taking steps to ensure that the committees are updated in good time in future.

I also reaffirm my commitment to update the Committee on this proposal once tripartite discussions have progressed. The Presidency have indicated that formal tripartite negotiations will commence in April.

5 March 2018

Letter from the Chairman to Lord Callanan, Minister of State for Exiting the European Union

Thank you for your letter dated 5 March 2018. It was considered by the EU Justice Sub-Committee at its meeting of 20 March 2018.

We decided to clear this proposal (Document 12882/16) from scrutiny. We note your explanation that the delays in updating us were caused by Departmental changes. We welcome your reassurance that you will keep us informed of the tripartite discussion of the text agreed by the Council in December last year (Document 15336/17).

We do not expect a response to this letter.

22 March 2018

AMENDED PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON CERTAIN ASPECTS CONCERNING CONTRACTS FOR THE SALES OF GOODS, AMENDING REGULATION (EC) NO 2006/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AND DIRECTIVE 2009/22/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AND REPEALING DIRECTIVE 1999/44/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL (13927/17)

Letter from Andrew Griffiths MP, Parliamentary Under Secretary of State and Minister for Small Business, Consumers and Corporate Responsibility, Department for Business, Energy and Industrial Strategy

Thank you for your letter dated 20th December 2017 regarding the above revised proposal, for which the government submitted an Explanatory Memorandum on 21st November 2017.

I would like to update the Committee on progress in the EU negotiations for this proposed Directive. Since the Commission published its amended proposal on 31st October 2017, the Council has met monthly. It has now completed its first reading, and there was a policy debate at the 4th June Justice and Home Affairs Council. The current Presidency of the Council of the EU, Bulgaria, has produced a second draft of the text ahead of the next working group on 20th June. The European Parliament adopted its position in February. It favours minimum harmonisation applying in specific areas, including allowing Member States to maintain or introduce provisions for a right to reject, including the UK's existing short-term right to reject goods that do not conform to the contract.

The government's negotiating objective is to have no reduction in the UK's existing consumer protection regime for goods sales. While we welcome greater harmonisation of EU law in principle, we do not support this at the expense of consumer protection in any Member State. The negotiations are still at an early stage, and it is too early to predict how easy it will be to achieve this.

The nature of the discussions in first reading focused on major themes such as the extent of support for full harmonisation and how much alignment there should be with the related draft Directive on certain aspects concerning contracts for the supply of digital content ('DCD' - COM (2015) 634).

Interaction with the related draft Directive for the sale of digital content

The Bulgarian Presidency of the EU also set itself the goal of completing trilogue negotiations with the European Parliament on the DCD during their tenure. However, progress has been slower than expected, predominantly because of the need to discuss the complex interactions between both Directives, as well as to achieve regulatory coherence between the DCD and the European Electronic Communications Code (EECC). The main unresolved issue relates to the scope of both Directives. The 4th June Justice and Home Affairs Council adopted the position that the Sale of Goods Directive should cover all consumer goods, including those that use digital content or services (i.e. goods which contain 'embedded' digital content), on the basis that this is the clearest outcome for consumers. The UK supports this position, in line with the DCD Council General Approach reached in June 2017. The European Parliament, however, is seeking the opposite approach, so that goods which have embedded digital content or services would be within scope of the DCD, leaving the Sale of Goods Directive to govern all other goods. At the same time, there is a general trend of convergence between the DCD and Sale of Goods, which is explained further below.

It is not yet clear when trilogue negotiations on the DCD will finish, and discussions are continuing this month. I will, however, write to both Committees with a substantial update on the outcome of these negotiations and the final agreement reached between the institutions, as soon as possible.

Level of harmonisation and implications for UK protections

The draft Sale of Goods Directive is set at maximum harmonisation. As detailed in the government's Explanatory Memorandum, this would have significant implications for the UK's current consumer protection regime for goods sales. Discussions have so far indicated that the biggest challenge for achieving the government's objective of not weakening consumer protection concerns the regime for

consumer remedies (Articles 9 – 13). Under current drafting, the UK would be required to abolish its short-term right to reject goods not conforming with the contract and the limit on the number of attempts a trader can make to repair or replace a good before termination of the contract or a price reduction must be offered.

So far Council has been divided between those Member States supporting a strict hierarchy of remedies (whereby a consumer would only be able to access remedies such as contract termination or price reduction after first attempting repair or replacement) and those preferring to allow consumers a free choice of remedy. The UK has a hierarchical regime, but supplements this with the added protections described above. Discussions have also focused on the level of harmonisation for the remedy regime, with France being most vocally supportive of a minimum harmonisation approach.

The 4th June Justice and Home Affairs Council indicated general support for aligning the Sale of Goods rules on remedies with the main elements of the approach in DCD, on the proviso that further technical adaptations are made. What this means in practice is yet to be determined, but it is possible that this will not satisfy the UK's red lines because the DCD rules for remedies for the lack of conformity (Article 12 DCD) are not the same as the UK's existing short-term right to reject non-conforming goods (although the Article 12 DCD regime is more similar to the current UK rules than the original Sale of Goods proposal is, because paragraph 3(c) allows immediate price reduction or contract termination if a lack of conformity is of a "serious nature").

The Justice and Home Affairs Council also agreed to align the level of harmonisation on time limits (Article 14 Sale of Goods) with the outcome in Article 9a of the Council's General Approach on DCD. This would set it at minimum harmonisation so that Member States could go beyond the minimum. For example, the UK could keep its existing six-year (five years in Scotland) limitation period (the UK does not have a liability period), which would meet our negotiating objectives.

Justice and Home Affairs Council did not discuss the Commission's proposal to increase to two years after sale the period for the reversed burden of proof, and it is still unclear how this will develop in working group. As detailed in the Explanatory Memorandum, this would be an increase to consumer protection for the UK and many other Member States because during this time, it is for the trader, not the consumer, to prove that a good was in conformity with the contract on the day on which the good was delivered. It is the UK's objective to maintain the existing six-month period due to the burden that a significant increase may place on small traders. However, we have left ourselves some flexibility to agree to extend this to no further than one year if that helps achieve the UK's wider negotiating objectives.

Committee Questions

I thank the Committee for highlighting the comments by Which? regarding the draft Directive, and for clarifying your own position that you would not want a reduction in consumer rights. I hope that this reply has made clear that the government shares these concerns and objectives.

The Committee also asked why the Commission did not undertake a new impact assessment following the agreement in 2017 to expand the scope of the draft Directive to include all goods sales, not only online and distance goods sales. In the first working group in November 2017, the Commission explained that a new one is not required as the assessment accompanying the original December 2015 proposal is still valid and that it had been supplemented with a European Parliament analysis in July 2017. Member States such as Germany, Italy and Portugal raised concerns with this approach in the November 2017 working group. If it comes up again in Council, we will be supportive. We judge this European Parliament analysis to be relatively weak as it does not examine additional, one-off costs that businesses would face if they are selling only offline and domestically. We would prefer the Commission to explore these costs further.

I will keep the Committee updated regularly on the progress of the negotiations for the new Directive, including on its interaction with the DCD negotiations.

18 June 2018

Letter from the Chairman to the Parliamentary Under Secretary of State and Minister for Small Business, Consumers and Corporate Responsibility

Thank you for your letter dated 18 June 2018 which was considered by the EU Justice Sub-Committee at its meeting of 17 July.

We decided to retain the proposal under scrutiny.

We are grateful for your update on the Council's initial consideration of this matter and your detailed and comprehensive analysis of the technical aspects of this proposal's interaction with the accompanying proposed Directive governing consumer protection rights for the sale of digital content. We note that on 4 June the Council decided that this proposal should cover all consumer goods including those that use digital content because this would provide the "clearest outcome for consumers". At this initial stage, this appears to constitute a sensible approach, but we can see that it casts doubt on the viability of the accompanying proposal dealing with the sale of digital content. (We retained that proposal under scrutiny in our letter dated 12 September 2017.)

Whilst we are pleased that, like us, the Government wishes to avoid any reduction in the UK's consumer protection standards, we also note your warning that it is too early in the negotiations to predict "how easy it will be to achieve". Turning to the Commission's failure to undertake an impact assessment following the significant widening of the original proposal's scope, we note your explanation but urge you to press the Commission to provide one.

We look forward to considering, in due course, your updates on the Council's ongoing discussion of this matter.

17 July 2018

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE A BALANCED IP ENFORCEMENT SYSTEM RESPONDING TO TODAY'S SOCIETAL CHALLENGES (15313/17)

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE GUIDANCE ON CERTAIN ASPECTS OF DIRECTIVE 2004/48/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS (15314/17)

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTE SETTING OUT THE EU APPROACH TO STANDARD ESSENTIAL PATENTS (15315/17)

Letter from the Chairman to Jo Johnson MP, Minister of State for Universities, Science, Research and Innovation, Department for Business, Energy and Industrial Strategy

Thank you for your Explanatory Memoranda dated 18 December 2017. All three were considered by the EU Justice Sub-Committee at its meeting of 20 February 2018. We decided to retain all three Commission Communications under scrutiny. Together, these three Commission Communications illustrate the considerable added value inherent in a European wide approach to the protection of intellectual property rights based on a system coordinated and overseen by the European Commission.

The accompanying Communication on Standard Essential Patents deals with a highly technical and specialised area of patents, and it too shows, if the Commission's estimates are accurate, the considerable economic value of digitalisation (estimated by the Commission to be worth €110 billion per year to the European economy over the next five years) and the importance that standardisation and patent protection play in facilitating the interoperability of digital technology; a key issue to households, consumers and businesses across the world, and central to the EU's efforts to create a Digital Single Market.

Beyond acknowledging the UK's imminent departure from the EU, your three Explanatory Memoranda on these documents do not address or deal directly with the impact of Brexit in this area. Neither do they offer us any plan, policy or solution to the substantial loss of the considerable benefits in this area provided by the level of EU cooperation these Communications highlight. We note that in paragraph 18 of your Explanatory Memorandum on the Communication dealing with the application of Directive 2004/48/EC, you state that: "it is in the interests of UK rights holders to have a legal framework in the EU that allows them to effectively enforce their [IP rights] while the UK remains a member of the EU, and once it has left"; can you tell us how you hope to achieve this?

With regard to the contents of the Communication on a balanced IP enforcement system and the Communication on Directive 2004/48/EC, please can you tell us:

(i) what plans you have to take advantage of the Commission's renewed emphasis on cooperation with States outside the EU; particularly, given its commitment to "step-up" cooperation with third countries?

(ii) what plans do you have to replace (or perhaps replicate) the coordinated continental approach inherent in EU cooperation and its institutions?

(iii) what plans do you have concerning the UK's post-Brexit membership of the EUIPO?; and,

(iv) given the range of agreements in place agreed under the auspices of the EUIPO with China and countries in South-East Asia and Latin America that seek to combat counterfeiting, what plans do you have to replicate these agreements? In what form? And, on what legal basis?

Turning to the Commission's Communication on Standard Essential Patents (SEP). We note the Commission's predictions regarding the importance of the system to the digital economy (cited above), plus your views that an effective SEP framework is "important to innovation and growth" and your recognition of the significance of "a predictable enforcement environment". However, again, your Explanatory Memorandum did not address the issues in this area arising out of our imminent exit from the EU. Please can you therefore tell us:

(i) what plans, post Brexit, you have to replicate or participate in the Standard Essential Patent protection system outlined in the Commission's Communication?

(ii) what plans, post-Brexit, you have to participate in the pan-European institutional infrastructure that underpins the patent protection system outlined in the Commission's Communication?

(iii) what impact do you anticipate Brexit will have on the UK's participation in the Unitary Patent Court (UPC)? And,

(iv) on what legal basis, following Brexit, can the UK continue to participate in the UPC, in particular, given that the UPC system is, in part, created via European Regulations (Regulation 1257/2012 and Regulation 1260/2012)?

We look forward to considering your response within the usual 10 day deadline.

22 February 2018

Letter from Jo Johnson MP, Minister of State for Universities, Science, Research and Innovation

Thank you for your letter of 22 February 2018 to Jo Johnson, in response to three Explanatory Memoranda on the above Commission Communications submitted by the Department of Business, Energy and Industrial Strategy in December 2017. As I am now the Minister with responsibility for intellectual property, I am responding. I will address each of your questions in turn.

In your letter you note that the three Explanatory Memoranda do not address or deal directly with the impact of Brexit in this area. As you are aware, the UK government is currently negotiating the UK's exit from the EU, and therefore we are limited in what we are able to divulge, without impacting on these negotiations. This approach has been agreed with both EU Scrutiny Committees. Accordingly, we cannot comment on UK membership of the EUIPO post-exit. However, as set out in the government's IP Enforcement Strategy, the UK government is committed to continue working with domestic and international partners from industry, law enforcement and government to ensure we have effective,

proportionate and accessible enforcement of IPRs. The UK has one of the best IP regimes in the world[3] and leaving the EU will not change that: we will continue to deliver quality rights granting services, lead the world in enforcement and engage in international IP discussions.

You ask how we hope to achieve the statement in paragraph 18 of the EM dealing with the application of Directive 2004/48/EC "it is in the interests of UK rights holders to have a legal framework in the EU that allows for them to effectively enforce their [IP rights] whilst the UK remains a member of the EU, and once it has left". This statement is in reference to the fact that UK IPR holders also have IPRs that are valid in other Member States. Whilst the UK remains a member of the EU we have the opportunity to encourage the Commission to ensure the EU legal framework provides for the effective enforcement of IPRs. Once the UK leaves the EU these IPR holders will still have IPRs that are valid in the EU and may need to be enforced. Therefore UK action now can benefit these IPR holders in the future.

Turning to the specific questions you ask about the Communications on a balanced IP enforcement system, and on Directive 2004/48/EC, I will answer questions (i) and (iv) together, as both relate to international cooperation and engagement.

(i) what plans you have to take advantage of the Commission's renewed emphasis on cooperation with States outside the EU; particularly, given its commitment to '"step-up" cooperation with third countries?

(iv) given the range of agreements in place agreed under the auspices of the EUIPO with China and countries in South-East Asia and Latin America that seek to combat counterfeiting, what plans do you have to replicate these agreements? In what form? And, on what legal basis?

Because overseas IP regimes can be difficult for businesses to navigate and make it difficult for them to successfully enforce their IP, the UK government has specialist IP attachés to help UK businesses in some of the most important and challenging international markets – China, India, Brazil and South East Asia. The attachés work closely, where appropriate, with their colleagues from other EU Member States, the Commission, and colleagues from other countries. Activity by the Commission in this area has been limited in recent years, hence the pledge in the Communication to step up action. As the Commission's activity in this area picks up, the UK IP attachés will monitor developments to identify opportunities for cooperation and collaboration.

As your letter notes, the EUIPO, through the IP Key programme, will be undertaking projects to tackle IP infringement in China, the ASEAN member states and Latin America. As this programme is in the early stages of planning, there is little information as to what it specifically expects to achieve, aside from an overarching aim to improve the enforcement regime to an EU standard. Officials in the Intellectual Property Office (IPO) have had initial discussions on opportunities for cooperation, and are now waiting for the in-country EUIPO teams to be appointed before making contact.

Like many other Intellectual Property Offices, the UK IPO has a number of Memoranda of Understanding with its equivalents in other countries. The IPO's bilateral cooperation is not limited to those countries with which there is a formal agreement (and for the majority of those countries where there is a UK IP attaché there is no formal agreement), however for some countries this is the preferred approach. For example the IPO has an agreement with its partner office in the Philippines (IPOPhil) which is focused purely on improving IP enforcement frameworks by sharing expertise and enforcement techniques between the two offices. Other more general MoUs include enforcement activities, such as the MoU with the Vietnam IPO (NOIP) covering enforcement training for market inspectors. Outside of formal agreements activities such as judicial exchanges, study visits, and training seminars and workshops also take place, and will continue in the future.

(ii) what plans do you have to replace (or perhaps replicate) the coordinated continental approach inherent in EU cooperation and its institutions?

The UK already has a well-established process for coordinating the response to IP infringement. Within the UK the IPO has responsibility for ensuring that the framework exists to enable businesses and individuals to protect and enforce their intellectual property rights. The IPO itself has no direct enforcement powers, but instead provides strategic leadership by developing policies, ensuring the legal

[3] For example the Taylor Wessing Global IP Index https://united-kingdom.taylorwessing.com/documents/get/576/gipi5-report.pdf/show_on_screen and US Chamber International IP Index http://www.theglobalipcenter.com/ipindex2018-chart/

framework is fit for purpose, coordinating activity, and supporting operational activity through its intelligence hub.

The UK IP enforcement environment, like that in other countries (including other EU Member States, and the Commission and its institutions) is complex, with multiple agencies involved in the effort to tackle IP infringement both nationally and internationally. As part of its coordination role the IPO works to bring these agencies together and ensure information reaches the right agency at the right time. This includes close collaboration in particular with HMRC and Border Force, Trading Standards, and law enforcement (including the IPO-funded Police IP Crime Unit (PIPCU), based within City of London Police). As those who infringe intellectual property rights have no regard for national borders, cooperation with international partners is essential, and the government recognises this. Coordination and cooperation with foreign governments and law enforcement regularly takes place, using contacts made through: the IP attaché network; multilateral organisations such as WIPO and OECD; and law enforcement networks. Recent examples include dealing with Euro 2016 counterfeit goods with the French Douane, halting the production and import of fake washing powder with Lithuanian police, and assisting colleagues in Vietnam to develop their own coordinating structures to effectively enforce intellectual property rights.

The government also recognises the key role that industry can play in tackling IP infringement. Through the IP Crime Group, the IPO brings together industry, law enforcement and government to coordinate best practice and awareness raising activities. The IP Crime and Enforcement Report[4], published annually by the IPO in conjunction with the IP Crime Group, summarises the threat posed by IP infringement and the activities taken by all group members to tackle the issue over the past year.

Moving on to the Explanatory Memorandum on the Commission's Communication on Standard Essential Patents (SEPs), you asked four questions that relate to issues arising in this area out of our imminent exit from the EU. I will consider the first two questions together.

(i) what plans, post-Brexit, we have to replicate or participate in the SEP protection system outlined in the Commission's Communication?

(ii) what plans, post-Brexit, you have to participate in the pan-European institutional infrastructure that underpins the patent protection system outlined in the Commission's Communication?

Currently, patents in the EU are granted either by the national patent office of an EU member state, which will provide protection for the jurisdiction of that member state only, or by the European Patent Office (EPO), which examines applications for European Patents, which upon grant are split into individual national patent rights in each of the countries designated by the applicant. The patent applicant is free to choose the office at which they apply. It is important to note that the EPO is an international – rather than EU – institution, and consists of non-EU member states as well as all 28 EU member states. The UK's membership of the EPO is neither through the EU nor contingent upon the UK being a member of the EU. Consequently, the UK's relationship with the EPO will not be changed by our exit from the EU.

A Standard Essential Patent (SEP) is a patent for an invention that must be used to comply with a technical standard. The patent itself is no different to a patent for an invention which is not essential to comply with a standard – it is processed and granted by a patent office in the same way as a patent in any other area of technology. When a standard is developed and a patent is deemed to be essential to that standard, the patent owner will often be required by the standard developing organisation (SDO) to commit to licensing it on fair, reasonable and non-discriminatory (FRAND) terms (for which there are generally accepted principles, but no clear, agreed definition – and certainly not one that is legally specific). Litigation on SEPs is based on commercial and intellectual property law; of course, the interaction between UK and EU courts after the UK exits the EU is subject to negotiation.

The Commission has not proposed any legislative measures for SEPs; instead, the Commission's work will focus on, for example, improving the guidance and information that is available on FRAND licensing (and litigation) and improving the information provided by databases maintained by SDOs, for example, by linking with patent offices and providing more reliable information on the essentiality of patents. These measures are ultimately about improving the transparency of the framework in order to minimise

[4] https://www.gov.uk/government/publications/annual-ip-crime-and-enforcement-report-2016-to-2017

problems and avoid the landscape being too complicated for inexperienced users to navigate, but these will likely have a broader reach than EU member states given the nature of the SEPs landscape. We will continue to follow the Commission's work in this area following the UK's exit from the EU as part of the global picture on SEPs. This will be carried out by bilateral engagement with the EU and nation states, interaction with industry and SDOs and government membership of major SDOs.

While the Commission's Communication necessarily focuses on the SEPs issues arising in the EU, these are in fact global issues. The vast majority of SEPs are found in the digital and telecoms sectors and these are very much globally oriented industries. For SDOs such as the European Telecommunications Standards Institute (ETSI), which is the most significant SDO in the telecoms industry (from a UK perspective), members inside and outside the EU have almost identical access to ETSI. Other related SDOs also provide global, open membership. We are thus satisfied that there will not be significant changes in the way in which UK government or businesses interact with standards organisations where there are substantial SEP transactions[5]. Additionally many of the drivers around SEPs come from the commercial side and are thus largely set apart from our apart from our EU status.

(iii) what impact do you anticipate Brexit will have on the UK's participation in the Unitary Patent Court (UPC)? And,

(iv) on what legal basis, following Brexit, the UK can continue to participate in the UPC, in particular, given that the UPC system is, in part, created via European Regulations (Regulation 1257/2012 and Regulation 1260/2012)?

The Unified Patent Court (UPC) is established by an international treaty between the Contracting Member States, it is therefore an international court and not an EU institution. The European Regulations (No. 1257/2012 and No. 1260/2012) establish European Patents with Unitary Effect (commonly referred to as Unitary Patents). Unitary Patents provide businesses with the option to replace their bundle of European Patents with a singular patent right spanning an international territory. The Court will have exclusive jurisdiction over cases involving Unitary Patents as well as bundles of European Patents (granted by the EPO) with its judgments having effect across the Contracting Member States of the Court.

The options for the UK's intellectual property regime after EU exit will be the subject of negotiation as we leave the EU. Whilst the UPC is not an EU institution, the UK's future relationship with Court will be subject to negotiations as we leave the EU. It would be wrong to set out unilateral positions in advance but our efforts will be focussed on seeking the best deal possible in the negotiations with our European partners.

Given the ongoing negotiations with the EU the answers I am able to give to your questions are limited. I trust what I have been able to provide addresses your concerns. I am happy to update the Committee where possible and as it becomes appropriate to do so in the course of negotiations.

13 March 2018

Letter from the Chairman to Sam Gyimah MP, Minister of State for Universities, Science, Research and Innovation

Thank you for your letter dated 13 March 2018 which was considered by the EU Justice Sub-Committee at its meeting of 17 April.

We decided to retain all three Commission Communications under scrutiny.

Inadequate response to our questions

Whilst you have provided the Committee with a lengthy response, the information included in your letter does little to address our legitimate concerns and questions. Instead you have chosen to provide us with lengthy explanations about how the current UK based arrangements operate. These include: the UK IP attaché's role; the UK IPO's responsibilities to coordinate and operate within what you describe as a "complex" environment; and, an explanation of the difference between arrangements

[5] Please note that there are other issues around EU exit and technical standards which are not SEP centric and are not covered here.

governing national and European Patent Office patents. While interesting this was not the information we sought.

In the limited sections of your reply that seek to address our EU/Brexit related questions, we note that you choose to ignore the Brexit related complexities that lay behind our questions. (This is in addition to your refusal to discuss those matters that the Government deem too sensitive to share with the Committee (see below).) For example, with regard to the UK's participation in the Unitary Patent Court (UPC). You are of course correct in your assertion that the UPC is the product of an international treaty and, therefore, not an EU institution. But, you do not address directly how the UK can continue to participate in the UPC given that its most important aspect — the ability to enforce a single patent across the territory of the participating EU Member States – is introduced and underpinned by two EU Regulations over which, incidentally, the CJEU will remain the final arbiter.

Your description of a Unitary Patent as an "option [for business] to replace their bundle of European Patents with a singular patent spanning an international territory" (emphasis added) ignores the importance of EU law to the UPC's system and underplays considerably the challenge that Brexit poses to the UK's continued participation in the UPC after we leave the EU.

With regard to your response to the question about the Government's own conclusion that "it is in the interests of UK rights holders to have a legal framework in the EU that allows them to effectively enforce their [IP rights] while the UK remains a member of the EU, and once it has left", we note your explanation that this statement was made in the context of the UK's efforts as a current EU Member State "to encourage the Commission to ensure the EU legal framework provides for the effective enforcement" of intellectual property rights, because "UK action now can benefit [rights holders] in the future". However, the Explanatory Memoranda that you submitted to us for scrutiny on these three Communications also focussed almost entirely on UK based arrangements and included little detail on any Government plan to this end. We require you to address this oversight.

Unwillingness to discuss the Brexit negotiations

The lack of detail in your response is exacerbated by your insistence that some of the matters that form the subject of our questions, particularly the central question about the UK's continued engagement with the EUIPO, remain subject to negotiation. You, therefore, remain unwilling to share the Government's position or desired outcome with us. We reject your suggestion that this approach of non-disclosure has been agreed with the EU scrutiny Committee of this House.

The Prime Minister's Mansion House Speech

Since we wrote to you in February, the Prime Minister delivered a speech at the Mansion House on 2 March 2018. She used this opportunity "to set out my vision for the future economic partnership between the United Kingdom and the European Union". She touched briefly on civil judicial cooperation and the post-Brexit arrangements for intellectual property. She said: "We will want our agreement to cover civil judicial cooperation … our agreement will also need to cover … intellectual property, to provide further legal certainty and coherence". At the conclusion of the speech, the Prime Minister added: "the world is watching … we know what we want … so let's get on with it" (emphasis added).

Recently, given the Government's poor handling of a number of scrutiny dossiers, we have had to emphasise to a range of Ministers the seriousness with which we undertake our constitutional responsibility to scrutinise the Government. Our letter to you sought to explore your Brexit related intellectual property policies, in the spirit of this responsibility. Despite the Prime Minister's assurance in March that "we know what we want", your reply does not convince us that the Government has a coherent plan for dealing with this important area of EU cooperation post-Brexit.

Like you, we are concerned that "those who infringe intellectual property rights have no regard for national borders". Hence our conclusion in our letter to you about the "considerable added value inherent in a European wide approach to the protection of intellectual property rights" and our desire to explore with you the ramifications of Brexit for this important area.

With the UK's departure from the EU less than a year away, we and industry are entitled to ask the Government for detailed plans and assurances about how the already "complex" landscape of intellectual property will look after we leave the EU; indeed, the Prime Minister herself highlighted the need for "legal certainty and coherence". Given the Prime Minister's assurance that "we know what we

want", we require you to reconsider your responses to our questions set out in our letter dated 22 February 2018.

We look forward to considering your response within the usual 10 day deadline.

17 April 2018

Letter from Sam Gyimah MP, Minister of State for Universities, Science, Research and Innovation

Thank you for your letter dated 17 April.

I recognise the Committee's interest and important role in examining the implications of the UK's exit from the European Union (EU) for intellectual property and in exploring the Government's plans and objectives in this regard.

I can assure the Committee that the Government is considering the different angles of EU exit issues in the area of intellectual property carefully in formulating its EU exit plans and negotiation options. The Government has also engaged and continues to engage with stakeholders in industry and elsewhere in order to ensure its plans and objectives take account of stakeholders' interests.

As you point out in your letter, since you wrote in February, the Prime Minister delivered a speech at Mansion House on 2 March 2018, in which she set out the Government's objectives for the future economic partnership between the UK and EU. This speech touched on intellectual property and stated the Government's objective of providing legal certainty for business in securing the best possible outcome from the UK's exit from the EU. In this respect, I would also like to refer the Committee to the Government's "Technical note: other separation issues - phase 2" published on 6 March, which set out the Government's approach to the outstanding separation issues in the area of intellectual property, but also noted that the UK has the ambition for a substantial future relationship on intellectual property.

With regard to the Unified Patent Court (UPC), I am pleased to say that the UK ratified the UPC Agreement on 26 April. This is an important step towards making the Court and Unitary Patent a reality. The Court is established by an international treaty and falls outside of the EU court framework. The Court's principal functions will be the adjudication of validity and infringement regarding Unitary Patents (EU rights) and bundles of European Patents (non-EU rights). The UPC is bound to follow EU law, where it is relevant to the case in hand. Consequently it can refer questions to the CJEU on the interpretation of EU law. However the final arbiter of any case before the UPC will be its own Court of Appeal and not the CJEU.

Although the Court is not part of the EU court framework, it is presently only open to EU Member States. Our future relationship with both the Court and the Unitary Patent will be subject to negotiation as we leave the EU. It should be noted that UK ratification is without prejudice to the UK's position on a future relationship with the Court.

While the Government always seeks to share as much information with Parliament as possible, I hope the Committee will recognise that the Government also has an important responsibility to ensure that parliamentary scrutiny does not in any way undermine the UK's negotiating position. This principle received overwhelming support in a motion following the Opposition Day debate in the House of Commons on 6 December 2016.

Therefore, I am at this point unable to respond without disclosing a Government position on issues which are still to be negotiated as part of the UK-EU future partnership negotiations. Nevertheless, I would be pleased to provide the Committee with more information on EU exit matters where possible, and as it becomes appropriate to do so in the course of negotiations. Moreover, if it would satisfy the Committee, I would be happy to meet with the Committee in person to discuss these issues in more detail.

28 June 2018

Letter from the Chairman to Sam Gyimah MP, Minister of State for Universities, Science, Research and Innovation

Thank you for your letter dated 28 June 2018 which was considered by the EU Justice Sub-Committee at its meeting of 24 July.

We decided to retain all three Commission Communications under scrutiny. We would like to accept your offer to appear before us in person to discuss these matters. To that end our officials will be in touch with yours to arrange a mutually convenient date.

We do not expect a reply to this letter.

24 July 2018

PROPOSAL FOR AN INTER-INSTITUTIONAL AGREEMENT ON A MANDATORY TRANSPARENCY REGISTER - DRAFT COUNCIL DECISION ON THE REGULATION OF INTERACTIONS BETWEEN OFFICIALS OF THE GENERAL SECRETARIAT OF THE COUNCIL AND INTEREST REPRESENTATIVES (15336/17)

Letter from the Chairman to the Lord Callanan, Minister of State for Exiting the European Union, Department for Exiting the European Union

Thank you for your Explanatory Memorandum dated 6 February 2018 which was considered by the EU Justice Sub-Committee at its meeting of 6 March.

We decided to retain the proposal under scrutiny.

As you will know, we retain the original proposal on this matter under scrutiny and look forward to considering your response to our letter dated 22 February. The text that forms the subject of this Explanatory Memorandum, has unfortunately already been agreed by the Council. We have already noted, in earlier correspondence, that this deprived us of our opportunity to fulfil our parliamentary scrutiny responsibilities.

Nevertheless, we now have an opportunity to influence the tripartite discussion of this matter, which you confirm began in January. There are, therefore, a number of related questions that we wish to put to you regarding the next stage of these negotiations:

> (i) how was the Council's proposed text received by the other two institutions involved in the tripartite discussions?
>
> (ii) what are the areas of agreement or disagreement between the parties?
>
> (iii) given a variety of earlier and repeated failures by the Government to keep us informed about the Council's discussion of a range of EU legislative proposals, we would like details about how you intend to keep us up-to-date with developments in the tripartite discussion of this proposal? And,
>
> (iv) how will these negotiations progress? Will the other two institutions submit their own versions of the IIA for discussion? (If so, we expect you to submit Explanatory Memoranda on these.)

Finally, with regard to the narrowing of the text, so that it no longer applies to COREPER (and the Deputies), we note your view that in narrowing the register's scope the Council is seeking to prevent it "from applying to Member States without their express opt-in". However, given the nature of the EU's legislative process and the role of the Council, if it agreed the final text with these provisions reinstated, would it not have given its express consent that the register should apply to COREPER?

We look forward to considering your response within the usual 10 day deadline.

7 March 2018

Letter from Lord Callanan, Minister of State for Exiting the European Union

Thank you for your letter of 7 March regarding the proposal for an Inter-Institutional Agreement (IIA) on a mandatory Transparency Register. My letter of 5 March replying to your letter of 22 February about EM 12882/16 crossed with yours. In that letter I undertook to update you further once formal tripartite discussions commence.

The initial tripartite discussions in December focused on how the negotiations would be conducted rather than on the text of the proposals. During the technical meeting in February the negotiations discussed the timings of the meetings, the guiding principles for the communication and the first five articles. The Presidency reported to the General Affairs Group that the European Commission rejected the Council's amendments and wished to stick to its original proposal.

As the three parties are just beginning to examine the text, we are not yet aware of the specific areas of the text where there are specific agreements or disagreements. Following the third technical meeting due to take place on 26 March, the Commission will draft a joint position, which is still to be agreed with the Council. We expect the European Parliament (EP) to produce its own written position on Articles 1-5 (Principle of conditionality, Transparency Register, meetings with officials of the General Secretariat of the Council, thematic briefings, public events). We will update you on the developments of the proposal once the formal tripartite discussions commence in April.

The proposed text is in the form of an IIA under Article 295 TFEU. It does not fall within the ordinary legislative procedure. The agreement of all three institutions will be required in order for this IIA to be adopted. The Council has taken the position that the agreement should not extend to COREPER or Member State's Deputies, and has proposed amendments to that effect.

I will continue to keep you up-to-date on the developments in the tripartite discussions as they progress.

16 March 2018

Letter from the Chairman to the Lord Callanan, Minister of State for Exiting the European Union

Thank you for your letter dated 16 March 2018 which was considered by the EU Justice Sub- Committee at its meeting of 17 April.

We decided to retain document: 15336/17 under scrutiny. (We have already cleared document: 12882/16 from scrutiny.)

We are grateful to you for your prompt response to our letter dated 7 March 2018 and welcome your renewed effort to keep us informed about the tripartite discussion of this matter. (We do not require a separate response to our letter dated 22 February.)

Whilst you state that the Government is unaware of any areas of agreement/disagreement between the parties involved in the tripartite negotiations, we note your confirmation that the Commission has already rejected the Council's proposed text. No doubt this is in part due to the Council's attempts to narrow the Inter-institutional Agreement's scope. We expect that the resolution of this issue and others will form the focus of further upcoming rounds of negotiation.

You have also confirmed that both the Commission and the European Parliament will be producing their own proposed texts of the Agreement. Our letter dated 7 March 2018 said that, in this event, we expected the Government to submit Explanatory Memoranda on these texts in order for us to undertake our scrutiny responsibilities; we take this opportunity to repeat this request. We believe it is customary for the participating EU institutions to agree beforehand an inter-institutional timetable governing tripartite discussions. We ask you to share the timetable with us.

We look forward to considering your response within the usual 10 day deadline.

17 April 2018

Letter from the Lord Callanan, Minister of State for Exiting the European Union

I am writing in response to your letter dated 17 April 2018, regarding the proposal for an Inter-Institutional Agreement (IIA) on a mandatory Transparency Register.

I acknowledge your request to receive Explanatory Memoranda on the texts submitted by the Commission and the European Parliament on the Transparency Register. As I confirmed in my previous letter, the Commission is expected to draft a joint position and the European Parliament is expected to produce its own version of the text. I will provide you with an update and further detail on the Commission joint position and the European Parliament text once they have been produced. I have asked my officials to keep in touch with your clerk when these texts emerge to ensure that they are handled in the most appropriate way.

You asked for an inter-institutional timetable governing the tripartite discussions to be shared with you. At the time of writing this letter, we do not have access to a timetable. We expect the dates of future meetings to be published shortly. The next inter-institutional trilogue meeting will be held on 4 June 2018.

Since my last letter to you on the Transparency Register, dated 16 March 2018, negotiators from the Council, Commission and Parliament met on 16 April 2018 to discuss taking this forward. The institutions agreed on the next steps for the negotiations, including a commitment to ensure the process is highly transparent. It was also agreed to host information sessions for stakeholders on the state of play of the negotiations. We are expecting to receive further detail on the discussion within the next few days and I will provide you with further information following this.

1 May 2018

Letter from the Chairman to Lord Callanan, Minister of State for Exiting the European Union

Thank you for your letter dated 1 May 2018 which was considered by the EU Justice Sub-Committee at its meeting of 5 June.

We decided to retain the proposed agreement under scrutiny.

As we said to you in our letter dated 17 April we welcome your renewed effort to keep us informed of the tripartite discussion of this proposal and await the Commission's joint position and the European Parliament's version of the text. We also welcome your acknowledgement of our request to receive Government Explanatory Memoranda on these texts once they emerge. Please confirm that you are willing to supply them.

Turning to the inter-institutional timetable, we look forward to being supplied with a copy of them; when do you expect them to be published? We also take this opportunity to endorse the tripartite's commitment "to ensure" that the process by which the Inter-Institutional Agreement is negotiated is "highly transparent". We ask that you provide us with a more detailed explanation of the planned "information sessions" for stakeholders. In particular, who are the relevant stakeholders and what information will be shared?

We look forward to considering your response within the usual 10 day deadline.

5 June 2018

Letter from the Lord Callanan, Minister of State for Exiting the European Union

I am writing in response to your letter dated 5 June 2018, regarding the proposal for an Inter-Institutional Agreement (IIA) on a mandatory Transparency Register.

I confirm that the government will provide Explanatory Memoranda on the Commission's joint position and the European Parliament version of the text as they emerge.

At the inter-institutional trilogue held on 4 June 2018, the negotiations focused on the scope of the register and who should be covered by it. The Council stated that it was prepared to be flexible to a certain extent, as long as the other institutions also took steps to move negotiations forwards. The European Parliament confirmed that they had tried to find a way to move forward, proposing that, on a voluntary basis, MEPs would sign a declaration confirming they would only meet with lobbyists who are signed up to the register. The European Parliament negotiation team argued that this would make it virtually impossible for MEPs to meet unregistered lobbyists. The European Parliament would also only invite registered lobbyists to attend committee meetings.

There was an additional political meeting on the 12 June. I have not yet had a full description of what was discussed, but have been informed that it was a positive meeting that should help in moving the process forward. I also understand that the Commission is putting pressure on the European Parliament to go further in their use of the Transparency Register.

With regards to your request to be supplied with a timetable, in late April we were informed by the Presidency that a list of dates would be published on the Transparency Register website. These dates have not yet been published. My officials followed this up with the Presidency and were told that dates of future meetings were not yet available. We have been informed that the Austrian Presidency will take this forward from July, including informing Member States of the dates of upcoming meetings.

A stakeholder information session, 'EU Transparency Register negotiations - state of play and stakeholder Q&A', is currently scheduled to be held on 21 June 2018. It was proposed by the Presidency, at the meeting on 4 June, to postpone this meeting until 25 September as there was little progress made on which to update stakeholders. There was no reaction from the other attendees, so it is likely that this session will be postponed.

19 June 2018

Letter from the Chairman to Lord Callanan, Minister of State for Exiting the European Union

Thank you for your letter dated 19 June 2018 which was considered by the EU Justice Sub- Committee at its meeting of 3 July.

We decided to retain the proposed agreement under scrutiny.

We are grateful for your latest update on this proposal's slow progress through the EU's legislative processes and your confirmation that you will provide Government Explanatory Memoranda on the forthcoming Commission's joint position and the European Parliament's version of the text.

We note your update on the tripartite discussion and your explanation for the delay in sharing the timetable with the Committee. However, you have not answered our question regarding the postponed stakeholder sessions, particularly, who will attend and what information will be shared. We ask that you address this omission in time for the Committee to consider it along with an update on the stakeholder event when the House returns in October.

We look forward to considering your response in due course.

3 July 2018

REPORT FROM THE COMMISSION ON THE APPLICATION IN 2016 OF REGULATION (EC) NO 1049/2001 REGARDING PUBLIC ACCESS TO EUROPEAN PARLIAMENT, COUNCIL AND COMMISSION DOCUMENTS (15599/17)

REPORT FROM THE COMMISSION ON THE APPLICATION IN 2015 OF REGULATION (EC) NO 1049/2001 REGARDING PUBLIC ACCESS TO EUROPEAN PARLIAMENT, COUNCIL AND COMMISSION DOCUMENTS (8162/16)

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL REGARDING PUBLIC ACCESS TO EUROPEAN PARLIAMENT, COUNCIL AND COMMISSION DOCUMENTS (9200/08)

Letter from the Rt Hon David Lidington CBE MP, Chancellor of the Duchy of Lancaster, Minister for the Cabinet Office, Cabinet Office

As members of the Committee will be aware, every year the Government is required to submit an Explanatory Memorandum (EM) to Parliament on the European Commission's annual report on the operation of the Access to EU Documents Regulation (1049/2001). The Memorandum and its

associated report are then passed to this Committee, and its corresponding committee in the other house, for discussion and comment.

Unfortunately, during the establishment of DExEU (which has taken over responsibility for commissioning EMs and depositing them in Parliament) and the ensuing transition of policy responsibilities between departments, the commissioning of the EM in response to the EU's 2015 report on Access to EU Documents were overlooked. This omission was not picked up at the time by either DExEU or the Cabinet Office (nor subsequently by this House) and has only recently come to light.

I apologise to the Committee for this error. The Cabinet Office has now retroactively produced an EM for the 2015 report and will therefore also be laying this EM today alongside the current EM for the 2016 report for the Committee's attention.

13 February 2018

Letter from the Chairman to the Rt Hon David Lidington CBE MP, Chancellor of the Duchy of Lancaster, Minister for the Cabinet Office

Thank you for your letter of 13 February 2018 and your two Explanatory Memoranda of 14 February 2018, which were considered by the EU Justice Sub-Committee at its meeting of 27 March 2018.

We have decided to clear the 2016 report from scrutiny, but to retain the 2015 report under scrutiny. We have also decided to clear from scrutiny the original proposal for the regulation (doc. 9200/08).

We were grateful for the Commission's analysis of how the access to documents Regulation was applied in 2015 and 2016. However, we are concerned by the original failure to provide an Explanatory Memorandum about the 2015 report. Whilst we welcome the fact that your officials proactively raised the issue with our staff, and whilst we appreciate your explanation and apology, we are concerned on two fronts.

Firstly, this error is not isolated: it is our experience that the quality of scrutiny handling by several Government departments has declined over the past year or so, thereby precluding Parliament from carrying out its responsibilities. And secondly, we are now concerned that the transition of responsibilities that occurred upon the creation of DExEU could have led to other errors. We ask that you provide us with a table listing all scrutiny dossiers that moved between departments at the time when DExEU was established, showing which departments were responsible previously and which are responsible now.

We look forward to your reply within the usual ten days.

29 March 2018

Letter from the Rt Hon David Lidington CBE MP, Chancellor of the Duchy of Lancaster

Thank you for your letter of 29 March 2018 clearing the 2016 report, and the 9200/2008 proposal from scrutiny. I have noted, however, that the 2015 report has been retained for further scrutiny. You also expressed concerns about scrutiny handling within Government more generally.

In terms of meeting our scrutiny commitments to Parliament, the Government recognises the importance of your Committee, our commitments under the existing processes, and are grateful for the points you have raised. DExEU officials have written to all departments to reinforce the importance of the scrutiny of ongoing EU business and government undertakings to Parliament while we remain in the EU to address recent handling concerns expressed by both Scrutiny Committees.

In reference to the missed deposit of the 2015 Report (8162/16), I endeavoured to explain in my letter of 14 February 2018 that the overdue EM in response to the EU's 2015 report on the Access to EU documents resulted from a sifting oversight. To expand my explanation further, the central coordination for the scrutiny process moved from the Cabinet Office European and Global Issues Secretariat when the work of that Secretariat transferred to the newly created DExEU in July 2016. There were no personnel or system changes introduced as part of that transfer of responsibility between departments. It was an oversight by the team that sifts EU documents and deposits them for scrutiny; and this was not picked up by anyone else. I do, however, understand your concern that if

such errors were to continue across Government, Parliament would then be precluded from carrying out its responsibilities.

As part of the wider machinery of government changes alongside the creation of DExEU, such as the forming of the Department for Business, Energy and Industrial Strategy (BEIS) and the Department for International Trade (DIT), DExEU officials leading on managing the scrutiny process worked very closely with your EU Documents Officer to review the content of your Committee's Progress of Scrutiny (POS) which was being updated in September 2016. That exercise ensured that those documents held under scrutiny, and which were previously the responsibility of the Department of Energy and Climate Change, were moved to be listed under BEIS responsibility. At the time there were no documents held under scrutiny that had been the responsibility of other departments that needed to be moved to the newly created pages in the POS for DIT. DExEU took over responsibility for EU institutional issues from FCO; hence, those documents become a DExEU lead. At the time of the change, there were ten documents which became DExEU's responsibility. As requested in your letter, those documents and EMs are listed below.

- 7212/16, 7507/16 & 7795/14: rules of procedure for the Court of Justice and General Court
- 9121/15: IIA on Better Regulation
- Unnumbered EM of 27 January 2016: IIA on Better Lawmaking
- 15882/13: Comitology and adaptation of legal acts
- 12421/13: Decentralised Agencies
- 17469/12: Financing of European Political Parties
- OTNYR EM dated 9 July 2013: "2014 Decision"
- Unnumbered EM dated 3 December 2012: EP Right of Inquiry

I hope this information provides assurance that Government officials worked closely with your team to ensure that the lead responsibility for ongoing business was attributed correctly in 2016 during a time when the machinery of Government was undergoing significant change.

16 April 2018

Letter from the Chairman to the Rt Hon David Lidington CBE MP, Chancellor of the Duchy of Lancaster

Thank you for your letter of 16 April 2018, which was considered by the Committee at its meeting of 1 May 2018.

We have decided to clear the document from scrutiny.

We note your explanation that the failure to deposit the document in Parliament was an oversight. We welcome your comment that DExEU officials have written to all departments to reinforce the importance of EU scrutiny.

Given that is now two years since the Machinery of Government changes, we hope that any similar issues have been identified and resolved. We appreciate the research that you have provided about the movement of dossiers during that period in 2016, which provides some reassurance about documents held under scrutiny.

We do not expect a reply to this letter.

3 May 2018

Letter from the Chairman to the Rt Hon Ben Wallace MP, Minister of State for Security and Economic Crime, Home Office

Thank you for your letter dated 21 December 2017 which was considered by the EU Justice Sub-Committee at its meeting of 23 January 2018.

We decided to retain the proposal under scrutiny.

Our letter to you dated 12 December put on record our disappointment with your handling of the scrutiny of this dossier. Whilst we note your "sincere apologies" and your more detailed explanation of the Member States' concerns with the inclusion within the proposal's scope of the (Italian) preventative freezing orders, we remain disappointed.

Our officials will shortly be in touch with your department to arrange a mutually convenient date for you to appear in person to explain your handling of the scrutiny of this dossier.

We do not expect a reply to this letter.

23 January 2018

Letter from the Rt Hon Ben Wallace MP, Minister of State for Security and Economic Crime

I am writing further to my letter of 21 December 2017, about progress of this measure through Council.

First, I would like to apologise for the late cancellation of my planned appearance at the Committee on 17 April. No discourtesy was meant to the Committee for my non appearance.

Since this file entered trilogue in January, my officials have been regularly updating the Clerks to the Committee about progress on this file. There have been four trilogues so far, with the matters being discussed mainly of a technical nature. Negotiations have been progressing well.

The European Parliament have proposed an amendment to the text of the Regulation providing for non recognition of freezing and confiscation orders on the grounds of fundamental rights. The proposal from the European Parliament seeks to mirror the existing wording in the European Investigation Order.

Most Member States to date have opposed the amendment's inclusion, on the basis that all EU legislation has to comply with fundamental rights and that to include such a clause in the operative text would undermine mutual trust between Member States. The UK supports this position, whilst of course stressing that we still have a scrutiny reserve over the text. Negotiations are ongoing on this point.

The Bulgarian Presidency has signalled its intention to try and reach an agreed text in COREPER at the end of May. However, this may change depending on the outcome of the negotiations on fundamental rights.

I would therefore be grateful if you could confirm that you are now content to clear this dossier from scrutiny.

4 May 2018

Letter from the Chairman to the Rt Hon Ben Wallace MP, Minister of State for Security and Economic Crime

Thank you for your letter dated 4 May 2018 which was considered by the EU Justice Sub- Committee at its meeting of 22 May.

We decided to waive the scrutiny reserve ahead of the Council's agreement of this matter in late May.

We were disappointed that you cancelled your planned appearance before us in April. We note your apology, but retain our concerns about the Home Office's poor handling of the scrutiny of this dossier. We hope to discuss this and other matters with the new Home Secretary, in person, shortly.

Turning to your update on the trilogue discussion of this proposal, we note the single issue of substance highlighted by you: the European Parliament's suggestion that the final text includes a provision that would permit the non-recognition of an order issued under this EU legislation on the basis of fundamental rights. As you will know, the European Parliament has a long history of pursuing this issue which stems from the criticism and problems faced by the early operation of the European Arrest Warrant (EAW).

The EAW was agreed at a time when such legislation was adopted by the Council on a unanimous basis without any input from the European Parliament. The Framework Decision which introduced the EAW did not include a specific provision permitting refusal of an individual EAW on the grounds of fundamental rights, but did include a recital confirming its respect for fundamental rights. Nevertheless, the EAW's operation has not been without criticism, has led to a number of referrals by national courts to the Court of Justice and, since its adoption, the Council has had to agree a suite of legislation protecting criminal procedural rights.

We note that since the EAW was adopted (under the reformed legislative procedures introduced by the Lisbon Treaty) the European Parliament successfully inserted into the European Investigation Order (EIO) (another EU criminal order based on mutual recognition) Article 11(1)(f) which states that a European Investigation Order may be refused if "there are substantial grounds to believe that the execution of the investigative measure indicated in the EIO would be incompatible with the executing State's obligations in accordance with Article 6 TEU and the Charter". The inclusion of this provision did not preclude the UK's participation in that EU instrument.

We assume that this proposal would include similar wording and note that when the UK implemented the European Investigation Order, the Government did not mention the EU's Charter of Fundamental Rights at all. Choosing instead to allow non-execution of an EIO when it is incompatible with "any of the Convention rights within the meaning of the Human Rights Act" (see Schedule 4 of the The Criminal Justice (European Investigation Order) Regulations 2017).

You cite opposition from the Member States, including the UK, to the inclusion of a similar provision in this proposal, arguing that it is unnecessary on the grounds that all EU legislation must comply with fundamental rights. Whilst of course this is correct, in our view, it misses the purpose that underlines the intention behind the European Parliament's suggested amendment which seeks to ensure that any individual execution of an order under this EU legislation by the national authority complies with fundamental rights; it also fails to learn the lessons from the EAW's adoption. We are therefore sympathetic to the European Parliament's proposed amendment and take this opportunity to endorse it. (We have sent a copy of this letter to Claude Moraes MEP the Chair of the Civil Liberties Justice and Home Affairs Committee (the LIBE Committee) in the European Parliament.)

Finally, we note your statement that officials in the Home Office have been "regularly" updating the Committee Clerks on this proposal's progress through the EU's legislative process. Whilst greater interaction between Government departments and Committee officials is always welcome, we would remind you that it is never a substitute for keeping the Committee up-to-date on developments in the Council and the EU's wider legislative processes.

We look forward to considering, in due course, an up-date on this matter once the Council agrees the text in late May.

23 May 2018

Letter from the Minister to the Rt Hon Ben Wallace MP, Minister of State for Security and Economic Crime

Thank you for your letter of 23 May. I am writing to provide a further update on negotiations.

As I informed you in my letter of 4 May, the European Parliament proposed an amendment to the text of the Regulation providing for non-recognition of freezing and confiscation orders on the grounds of fundamental rights, which seeks to mirror the existing wording in the European Investigation Order. I

also indicated that the Bulgarian Presidency had signalled its intention to try and reach an agreed text in COREPER at the end of May.

At COREPER on 29 May, a compromise text on the fundamental rights provision was agreed that was presented to the European Parliament on 30 May. The compromise text reads:

"The executing authority may decide not to recognise and not to execute a freezing [confiscation] order only if:

in exceptional circumstances, there are substantial grounds to believe on the basis of specific and objective evidence, that the execution of the order would, in the particular circumstances of the case, entail a manifest breach of the right to an effective remedy, the right to a fair trial, or the right of defence, as set out in the Charter".

However, the European Parliament were not content to accept the compromise text as presented, preferring their original proposed text.

Negotiations are therefore still ongoing on this point. The Presidency is hopeful that the Council and European Parliament will reach political agreement on this measure before the end of their Presidency (possibly at JHA Council on 21 June). However, this may change depending on the outcome of the continuing negotiations.

14 June 2018

Letter from the Chairman to the Rt Hon Ben Wallace MP, Minister of State for Security and Economic Crime

Thank you for your letter dated 14 June 2018 which was considered by the EU Justice Sub- Committee at its meeting of 21 June.

We decided to maintain our waiver of the scrutiny reserve resolution ahead of the Council's agreement of this matter.

Whilst you have not confirmed the precise wording that the European Parliament has proposed to deal with the non-recognition of confiscation and freezing orders on the grounds of fundamental rights, you said in earlier correspondence (dated 4 May 2018), that it is seeking to replicate the provisions it successfully inserted into the EU legislation which covered the European Investigation Order (EIO). We endorsed this amendment in our letter dated 23 May 2018.

We note that the negotiation of this matter is ongoing, but the Council's proposed wording set out in your letter is considerably narrower than the wording in the EIO and we are unsurprised that the European Parliament rejected it.

We look forward to considering, in due course, a further up-date once the Council agrees this proposal.

21 June 2018

Letter from the Rt Hon Ben Wallace MP, Minister of State for Security and Economic Crime

Thank you for your letter of 21 June. I am writing to provide a further update on negotiations.

As I informed you in my letter of 14 June, a compromise text was proposed that was presented to the European Parliament on 30 May. This text was not accepted by the European Parliament.

Following further negotiations on the issue of a ground for refusal on the basis of manifest breach of fundamental rights, a further compromise text on this issue was presented, and accepted by the European Parliament delegation at the sixth trilogue on 14 June. This text then formed the basis of a political agreement at COREPER on 20 June.

The final compromise text reads:

"The executing authority may decide not to recognise and not to execute a freezing [confiscation] order only if:

in exceptional circumstances, there are substantial grounds to believe, on the basis of specific and objective evidence, that the execution of the order would, in the particular circumstances of the case, entail a manifest

breach of a relevant fundamental right as set out in the Charter, in particular the right to an effective remedy, the right to a fair trial or the right to a fair trial or the right of defence".

We are content that this text does not give rise to any new legal obligations on the UK given the overriding obligation to act in accordance with the Charter's priovisions in any event.

The text will now go forward for final adoption to Council after the Summer recess, once the lawyer linguists have checked the text.

4 July 2018

Letter from the Chairman to the Rt Hon Ben Wallace MP, Minister of State for Security and Economic Crime

Thank you for your letter dated 4 July 2018 which was considered by the EU Justice Sub- Committee at its meeting of 24 July.

We decided to clear the proposal from scrutiny. We are grateful for your confirmation that the Council is now ready to agree this matter. We welcome the fact that the agreed text of the Regulation will include a provision permitting non-recognition of an order by a national court on the basis of fundamental rights.

We do not expect a response to this letter.

24 July 2018

DRAFT AMENDMENTS TO THE RULES OF PROCEDURE OF THE GENERAL COURT (7068/18)

Letter from the Chairman to Lord Callanan, Minister of State for Exiting the European Union

Thank you for your Explanatory Memorandum dated 9 May 2018 which was considered by the EU Justice Sub-Committee at is meeting of 5 June. We decided to retain the proposal under scrutiny.

We note that the Government considers that the first set of proposed amendments, relating to the role and functions of the Vice President, are uncontentious and will help ensure swift and effective court proceedings.

Our questions focus on the second set of amendments, which would make the use of the 'e- Curia' computer application mandatory for the lodging and service of procedural documents. Our concern is to ensure that this move does not impact adversely on effective access to justice.

We note the exceptions contained in the proposed amendments, including those for legal aid applicants who are not represented by a lawyer, or who do not have an e-Curia account. Seventeen percent of documents currently lodged with the General Court are not lodged or served via this digital application. If feedback from the parties who currently utilise the system is positive, and use of the system is free, then there may be some other issue for the remainder of litigants who are not currently using the system. The letter from the President of the General Court notes that the registry has some difficulties with procedural documents which continue to be sent by fax. This may suggest that litigants in some Member States do not have access to the relevant technology.

Does the Government believe that the exceptions provided for in the proposed amendments to the rules of court provide sufficient safeguards to ensure continued and effective access to justice across all Member States? If so, what is the evidence for this?

What, if any, consultation has been undertaken with stakeholders on this proposal?

We look forward to receiving your response to this letter within ten days.

5 June 2018

Letter from Lord Callanan, Minister of State for Exiting the European Union

Thank you for your letter dated 5 June 2018 where you expressed concern over the proposed mandatory use of the e-Curia application in the second set of amendments.

You noted that the General Court's proposal to make the use of the 'e-Curia' application mandatory for the lodging and service of procedural documents provided exceptions for legal aid applicants who are not represented by a lawyer or applicants who do not have an e-Curia account.

I have set out my answers to your questions below:

Q1. Does the Government believe that the exceptions provided for in the proposed amendments to the rules of court provide sufficient safeguards to ensure continued and effective access to justice across all Member States? If so, what is the evidence for this?

The mandatory use of the e-Curia application represents a logical step that will help improve the overall efficiency of the General Court through not having to handle court documents in a variety of formats (paper and digital). It also provides greater certainty for litigants appearing before the Court by eliminating the recurring technical and legal difficulties arising from the use of old technology.

I consider that the draft amendments and the existing Rules of the General Court provide sufficient safeguards to ensure continued and effective access to justice across all Member States.

The Statute of the Court (Article 19) and the existing General Court Rules of Procedure (Article 51) require all litigants to be legally represented and access to justice concerns for those litigants who do not have access to the e-Curia application are addressed through requiring litigants to be legally represented it being assumed that lawyers will be able to create accounts and access e-Curia with no great difficulty.

There will an exception for litigants who are eligible for legal aid and do not yet have a lawyer. They will be able to submit their initial application to Court on paper (amended Article 147). Thereafter the Rules (Article 147) provide for a lawyer to be appointed to the case thus addressing any access to justice concerns for these litigants. Therefore, I am content that sufficient safeguards will be provided to ensure continued and effective access to justice.

Q2. What, if any, consultation has been undertaken with stakeholders on this proposal?

The proposals were presented by the General Court to lawyers' representatives at meetings held with the Council of Bars and Law Societies of Europe on 24 October 2016 and 22 January 2018. Agents of Member States and the EU institutions were consulted during their visit to the General Court on 9 December 2016. The proposals were welcomed by all consultees.

In addition, my Department consulted and sought views from across Whitehall. No concerns were raised during this process.

I hope this is answers your concerns. In light of the upcoming decision on the proposed amendments in question at the GAC on 26 June, I would be grateful if you could clear or waive the scrutiny reserve on this dossier so that the Government can support the proposals.

13 June 2018

Letter from the Chairman to Lord Callanan, Minister of State for Exiting the European Union

Thank you for your letter of 13 June 2018 which was considered by the EU Justice Sub- Committee at its meeting of 21 June.

We decided to clear the matter from scrutiny.

We do not expect a reply to this letter.

21 June 2018

Letter from the Chairman to Lord Callanan, Minister of State for Exiting the European Union

Thank you for your Explanatory Memorandum dated 26 April 2018 which was considered by the EU Justice Sub-Committee at is meeting of 22 May. We decided to retain the proposal under scrutiny.

We note that, following the CJEU's review into the transfer of jurisdiction for preliminary rulings, the decision was taken not to effect a partial transfer of jurisdiction on the basis that there was no immediate need justifying a transfer of jurisdiction:

Q1. What assessment has the Government made of this conclusion?

In respect of the proposals that have been put forward to redistribute jurisdiction between the Court of Justice and the General Court, our principal concern is the proposed introduction of a permission to appeal procedure (with accompanying threshold test) to enable the Court of Justice to determine whether certain categories of case should be heard on appeal from the General Court.

We appreciate that this may lead to welcome efficiencies, which we would support. However, we note your equivocal analysis that there "appears to be a delegation of the first level appeal to a myriad of administrative agencies (each potentially with their own rules of procedure, culture and precedents) with the General Court becoming the final court of appeal in many such cases". You conclude that:

> "Concerns as to inconsistent practises will probably be addressed by the level at which the amendment puts the threshold for proceeding before the Court of Justice (in particular, that cases raising issues with respect to the unity, consistency or development of EU law will be admitted) though this will largely turn on how the threshold is interpreted and applied by the Court itself."

This is not entirely reassuring:

Q2. Is the proposed test sufficiently flexible that meritorious appeals will not be excluded?

Q3. What consultation has been undertaken with stakeholders on this proposal?

We look forward to receiving your response to this letter within ten days.

22 May 2018

Letter from Lord Callanan, Minister of State for Exiting the European Union

Thank you for your letter of 22 May in relation to the above matter. You noted that, following the CJEU's review into the transfer of jurisdiction for preliminary rulings, the decision was taken not to effect a partial transfer of jurisdiction on the basis that there was no immediate need justifying a transfer of jurisdiction. I hope that this letter addresses the questions you have raised.

Q1. What assessment has the Government made of this conclusion?

In December 2017, the Court of Justice of the European Union (CJEU) presented a report to the European Parliament, the Council and the Commission on possible changes to the distribution of competence for preliminary rulings. I am attaching that report to this letter. The report concluded that it did not appear to be an appropriate time to effect such a transfer for preliminary rulings. My Department agreed with the analysis and conclusions reached in the report.

In reaching its conclusion the CJEU placed particular weight on "*the central place occupied by the reference for a preliminary ruling in the legal order of the EU and the need to provide national courts with a swift and definitive answer to questions on the interpretation or validity of EU law that are raised before those courts*". In short, the CJEU regards preliminary rulings as key in ensuring the uniformity and consistency of EU law by directly providing national courts with answers to a very broad range of EU law questions. If such cases were transferred to the General Court, and then subject to a further appeal to the CJEU, it could take much longer for national courts to receive an answer to EU law questions and consequently lengthen national court proceedings.

The report also highlighted other difficulties in terms of the risk of divergence, due to the different purpose of the General Court and the difficulty in allocating concrete categories of case between the two courts.

We agree with the CJEU's conclusion and would prefer preliminary rulings, while we are still Member State and during the transition period, to be dealt with by the CJEU to give UK courts the possibility of obtaining answers more quickly. Furthermore, we have agreed that after the end of the transition period, UK courts will be able to make preliminary rulings in certain, limited cases and it would therefore be preferable for such cases to be dealt with by the CJEU.

It should be noted, however, that the conclusion of the report is not intended to be a final one, and reflects the current context of the ongoing Court reform programme. Any future reconsideration of the possibility of shifting certain preliminary references to the General Court will be assessed and advised upon as appropriate.

You also asked two further questions, in the context of the proposed introduction of a permission to appeal procedure, which will enable the CJEU to determine whether certain categories of case should be heard on appeal from the General Court.

Q2. Is the proposed test sufficiently flexible that meritorious appeals will not be excluded?

We consider the proposed test to be sufficiently flexible. The test involves the Court assessing first, whether the appeal has already involved some form of administrative appeal process before the case comes before the General Court; and second whether *it "raises wholly or in part an issue that is significant with respect to the unity, consistency or development of EU law "* (new Article 58a).

The second stage of this test in particular gives the CJEU a broad discretion to decide which cases to take forward in the context of administrative appeal cases and we believe it is therefore sufficiently flexible for the Court of Justice to have the necessary powers to take forward any meritorious appeals.

Q3. What consultation has been undertaken with stakeholders on this proposal?

At the Court Working Group on 20 April, Member States and the European Commission raised a number of questions concerning this proposal, including asking what impact assessments had been carried out by the Court. The Chair of the Working Group committed to returning to the next working group (scheduled for the 8 June) with more detailed information on these questions; as the proposals are still at an early stage, there was limited information available concerning consultations and impact. The UK Agent to the Court will raise this question at the next Working Group.

In addition, my Department consulted and sought views from policy and legal officials across Whitehall, as well as engaging with the Devolved Administrations. No concerns were raised during this process.

5 June 2018

Letter from the Chairman to Lord Callanan, Minister of State for Exiting the European Union

Thank you for your letter dated 5 June 2018 which was considered by the EU Justice Sub-Committee at its meeting of 3 July. We decided to retain the proposal under scrutiny.

We note your responses on the transfer of jurisdiction and the proposed permission to appeal test. We ask that you keep us appraised of any developments at the Court Working Group. In particular, we would ask for a detailed response on the question of consultation responses and impact assessments when these are available.

We look forward to receiving your response to this letter in due course.

3 July 2018

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE A NEW DEAL FOR CONSUMERS (7875/18)

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING COUNCIL DIRECTIVE 93/13/EEC OF 5 APRIL 1993, DIRECTIVE 98/6/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL, DIRECTIVE 2005/29/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AND DIRECTIVE 2011/83/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AS REGARDS BETTER ENFORCEMENT AND MODERNISATION OF EU CONSUMER PROTECTION RULES (7876/18)

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON REPRESENTATIVE ACTIONS FOR THE PROTECTION OF THE COLLECTIVE INTERESTS OF CONSUMERS, AND REPEALING DIRECTIVE 2009/22/EC (7877/18)

Letter from the Chairman to Andrew Griffiths MP, Parliamentary Under Secretary of State and Minister for Small Business, Consumers and Corporate Responsibility, Department for Business, Energy and Industrial Strategy

Thank you for your Explanatory Memoranda dated 4 May 2018. They were considered by the EU Justice Sub-Committee at its meeting of 12 June.

We decided to retain the documents under scrutiny.

As you know, we have taken a keen interest in the impact and ramifications of Brexit on the UK's participation in the EU's consumer protection *acquis*. In December 2017, we published our report "Brexit: will consumers be protected?" and we considered your response in March. You will recall that you said that the Government is "committed to maintaining high standards of consumer protection, delivering the stability and continuity consumers need to continue to make purchases". Your objective was to retain "effective protections in place for consumers purchasing goods and services cross-border in future". You concluded that UK's "intention" is to "cooperate closely" with the EU27 on "these matters after we leave the EU". We look forward to discussing the report when it is debated.

Turning to the Commission's proposed "*New Deal for Consumers*", we note that the amendments it proposes have been brought forward following a lengthy period of consideration by the Commission of the EU's existing consumer protection *acquis*. The matters dealt with by the proposed Directive that seeks to modernise the EU's consumer protection rules are timely. They introduce sensible and much needed amendments which take account of the changing means by which consumers engage with digital services and the online marketplace. Given the recent "Dieselgate" scandal, referenced in the Commission's accompanying documents, the introduction of a specific provision allowing national authorities to impose fines of at least up to 4% of a trader's turnover for widespread infringements of the EU consumer protection rules is an interesting development; it is notable that the Government's own recent consultation has pledged to go further and introduce fines with a ceiling of 10%.

The accompanying Directive which amends the existing EU rules governing applications for injunctive relief by national bodies representing the consumers' interest is also, on the face of it, sensible. Whilst we note your support for the Commission's efforts "to ensure that consumers' rights are robust and that they can be enforced effectively", our ability to scrutinise these proposals is limited by poor Explanatory Memoranda which offer us little analysis of the proposals and their policy implications for the UK. What little detail is provided tends to focus on your own consultation in this area.

We acknowledge the uncertainty that is created by Brexit, but as matters currently stand the Government has provisionally agreed a transitional period (due to expire at midnight on 31 December 2020) during which the UK will be obliged to implement and abide by all provisions of EU law, including these proposals if they come into effect during this period. With this in mind:

(i) when does the Government expect these proposals to come into effect, before/during/or after the transitional period?
(ii) regardless of when they come into effect, does the Government intend to align the UK with these proposals after Brexit?
(iii) are there areas covered by these proposals where the Government would want to diverge from the EU's rules after we leave the EU?
(iv) does the Government welcome these proposals? In particular, given its support for the EU's "efforts to ensure that consumers' rights are robust and that they can be enforced effectively", and your undertaking to us in response to our report that you are "committed to maintaining high standards of consumer protection, delivering the stability and continuity consumers need to continue to make purchases";
(v) has the Government sought the views of the Competition and Markets Authority, and other bodies such as Which? on the merits of the proposed Directive on representative actions for the protection of collective interests for consumers? If so, what were their views?

We look forward to considering your response within the usual 10 day deadline.

12 June 2018

Letter from Andrew Griffiths MP, Parliamentary Under Secretary of State and Minister for Small Business, Consumers and Corporate Responsibility

Thank you for your letter dated 12th June 2018, in reply to the Government's Explanatory Memoranda. I have taken the Committee's questions in order.

i. *When does the Government expect these proposals to come into effect, before/during/or after the transitional period?*

The proposals which make up the New Deal package are still at an early stage of Council negotiations, so it is currently unclear when negotiations will be finalised. Whether the transposition date falls within the Implementation Period depends on how quickly the negotiations progress and whether the transposition deadline remains at 18 months, as the current proposals set out. The Commission hopes to have the proposals agreed by May 2019; should this be the case Member States would need to adopt the proposals by November 2020, which would fall within the Implementation Period. However, Member States then have a further 6 months to bring the legislation into force, which would fall outside the Implementation Period. The Commission's timeline is very ambitious, however, and it is possible that any delays to negotiations would cause both deadlines to fall beyond the Implementation Period.

ii. Regardless of when they come into effect, does the Government intend to align the UK with these proposals after Brexit?
iii. Are there areas covered by these proposals where the Government would want to diverge from the EU's rules after we leave the EU?

The Government's approach will partly depend on the terms of our Future Economic Partnership with the EU. It is not yet clear whether, or to what extent, the UK will align or diverge with consumer law after EU withdrawal. However, the Government has been clear that it wants a deep and special partnership with the EU, and we recognise the importance of cooperating closely with our EU partners on the best way of protecting consumers after we leave the EU. The UK and the EU start from the unique position of regulatory alignment, trust in one another's institutions and a shared spirit of cooperation.

iv. Does the Government welcome these proposals? In particular, given its support for the EU's "efforts to ensure that consumers' rights are robust and that they can be enforced effectively", and your undertaking to us in response to our report that you are "committed to maintaining high standards of consumer protection, delivering the stability and continuity consumers need to continue to make purchases";

We support the Commission's focus on strengthening the EU consumer protection regime in the face of rapidly changing consumer markets, through the New Deal package itself and the other recent consumer law proposals that the EU is negotiating. We are still developing a detailed negotiating position on the New Deal and are consulting stakeholders accordingly. However, it is important that our objectives remain consistent with the themes of the Consumer Green Paper.

v. Has the Government sought the views of the Competition and Markets Authority, and other bodies such as Which? on the merits of the proposed Directive on representative actions for the protection of collective interests for consumers? If so, what were their views?

The Government regularly consults consumer, business, and regulatory stakeholders on all EU consumer business. The CMA has no major concerns, as long as the effect of Article 1(2) of the proposed Directive is maintained, which allows Member States to adopt or maintain their own procedural means at national level to protect the collective interests of consumers. Overall, Which? welcomes the proposal as a significant development for consumers, subject to a few detailed comments on which we will work with them as we develop a negotiating position.

26 June 2018

Letter from the Chairman to the Minister responsible for Small Business, Consumers and Corporate Responsibility, Department for Business, Energy and Industrial Strategy

Thank you for the letter dated 26 June 2018. It was considered by the EU Justice Sub- Committee at its meeting of 17 July.

We decided to retain the three documents under scrutiny.

Aside from confirming the views of both the Competition and Markets Authority and Which? about the proposed Directive on protecting consumers' collective interests - we note in particular Which?'s view that the proposal is "a significant development for consumers" – the replies to our questions offered us little information on which to take our scrutiny of these proposals forward and entirely failed to address the issue that lies at the heart of our letter: what will the consumer protection landscape in the UK look like after we leave the EU?

The Government's White Paper, "The Future Relationship between the United Kingdom and the European Union" published on 12 July, said that the Government wishes to "maintain reciprocal high levels of consumer protection". It also stated that "there should be cooperation on enforcement … and a framework to work collectively on areas of wider consumer detriment". Given these aspirations, we ask again:

(i) does the Government intend to align with these proposals post-Brexit? And,

(ii) are there areas covered by these proposals where the Government would want to diverge from the EU's rules after we leave?

We look forward to considering your response after the House returns from recess.

17 July 2018

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON EUROPEAN PRODUCTION AND PRESERVATION ORDERS FOR ELECTRONIC EVIDENCE IN CRIMINAL MATTERS (8110/18)

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL LAYING DOWN HARMONISED RULES ON THE APPOINTMENT OF LEGAL

REPRESENTATIVES FOR THE PURPOSE OF GATHERING EVIDENCE IN CRIMINAL PROCEEDINGS (8115/18)

Letter from the Chairman to the Rt Hon Nick Hurd MP, Minister of State for Policing and the Fire Service, Home Office

Thank you for your Explanatory Memorandum dated 3 May 2018 which was considered by the EU Justice Sub-Committee at is meeting of 21 June. We decided to retain the matter under scrutiny.

In respect of the decision whether to opt-in to the proposed Regulation, we ask that you provide us with further information about the existing tools you mentioned (both within the EU and those being developed internationally to tackle similar issues). How are the tools that are already operational working in practice? When will the new international tools become fully operational?

You note that one of the considerations as to whether to opt-in to the Regulation would be the impact on the Government's ability to progress the UK-US Data Access Agreement. Please could you expand on this. What concerns do you have?

If the Government decide not to opt-in to the proposed Regulation, what assessment has been made of the obligations that would arise under the proposed Directive? Who would bear any costs involved?

What analysis has been conducted on the suggested legal base for the Directive? Does the Government accept that Articles 53, 56 and 62 TFEU are an appropriate legal base for the measure?

We look forward to your response to this letter in ten days.

21 June 2018

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL LAYING DOWN RULES FACILITATING THE USE OF FINANCIAL AND OTHER INFORMATION FOR THE PREVENTION, DETECTION, INVESTIGATION OR PROSECUTION OF CERTAIN CRIMINAL OFFENCES AND REPEALING COUNCIL DECISION 2000/642/JHA (8411/18)

Letter from the Rt Hon Ben Wallace MP, Minister of State for Security and Economic Crime

Thank you for your Explanatory Memorandum (EM) dated 12 June 2018 which was considered by the EU Justice Sub-Committee at its meeting of 24 July. We decided to retain the proposal under scrutiny.

You do not state whether the Government intends to opt-in to this proposal, although your underlying analysis highlights some genuine concerns. We have a number of questions:

> **1. How will a national register of bank accounts be developed and implemented pursuant to the Fifth Anti-Money Laundering Directive?**
>
> **2. When will the Government undertake consultation on that Directive, given that the transposition deadline is only a year away?**
>
> **3. What impact would this Directive have post-Brexit? In particular, we ask for your assessment of the impact of the proposal that EU requests would, by law, have to be treated more urgently than non-EU requests.**

We note your concerns relating to the proposed requirement for Member State Financial Intelligence Units to share information with Europol and their domestic agencies in certain circumstances. We also note the comment in the Commission's own proposal document that: "as regards procedural rights, removing the need for judicial authorisation that exists in some Member States would have a very serious impact. Therefore the exchanges of information between Financial Intelligence Units and competent authorities will be subject to national procedural safeguards".

> **4. If the UK were to opt-in to this proposal, do you envisage that there would be any domestic procedural safeguards in place to preclude inappropriate or disproportionate disclosures of information? If so, what would these be and what**

affect would they have on any requirement on Financial Intelligence Units to share information with Europol?

We look forward to your reply in the usual 10 days.

24 July 2018

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE PROTECTION OF PERSONS REPORTING ON BREACHES OF UNION LAW (8713/18)

Letter from the Chairman to Kelly Tolhurst MP, Parliamentary Under Secretary of State and Minister for Small Business, Consumers and Corporate Responsibility, Department for Business, Energy and Industrial Strategy

Thank you for your Explanatory Memorandum dated 15 June 2018 which was considered by the EU Justice Sub-Committee at its meeting of 24 July. We decided to retain the proposal under scrutiny.

It is evident from your detailed EM that the Government has a series of concerns about these proposals, including, notably, their application in the context of cases touching on national security. We have a series of further questions:

Q1. Is the Government satisfied that the UK has adequate provision for whistleblowing and is the law and practice in the UK sufficient to provide safeguards against abuse?

Q2. The types of whistleblowing covered by the proposed Directive are far-reaching. The Government's analysis on subsidiarity does not really address the question of whether this is a significant concern – but rather suggests that it would be "preferable to proceed with a non-legislative approach." We note the Reasoned Opinion issued by the Swedish Parliament. What is your detailed assessment as to whether these issues would be better tackled at a Member State level?

Q3. The Government's impact assessment notes that employment tribunals would not be able to handle the full range of complaints that could arise under this directive (including from shareholders, suppliers and non-executive directors). Which court would you expect to hear these types of complaints and would you expect any capacity related issues in this regard?

Q4. How would you envisage that any national security exemption would operate in practice – particularly in relation to third party non-state actors (including journalists)?

We look forward to your reply in the usual 10 days.

24 July 2018

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON COOPERATION BETWEEN NATIONAL AUTHORITIES RESPONSIBLE FOR THE ENFORCEMENT OF CONSUMER PROTECTION LAWS (9565/16)

Letter from Andrew Griffiths MP, Parliamentary Under Secretary of State and Minister for Small Business, Consumers and Corporate Responsibility, Department for Business, Energy and Industrial Strategy

Thank you for your letter of 15th November 2017 to Margot James MP in which you again waived scrutiny of the above file ahead of the Council's agreement. The Competitiveness Council met on 30th November – 1st December 2017 and the file was agreed. No changes were made and so there are no substantial policy points on which to update the Committee. The new Regulation was published in the Official Journal of the European Union on 27th December 2017.

The Committee stated that they were dissatisfied with the Government's explanation of how it would be decided whether the threshold for an infringement to be considered to have a "Union dimension" (and therefore coordinated by the Commission) is met. This methodology was not discussed substantially during the negotiations. It depends on how the threshold of 'collective harm' will be interpreted. As set out in Margot James' earlier letter, a view based on UK caselaw suggests that if it

can be shown that there is a common practice affecting consumers' interests (as a whole) in a group of Member States which together account for two-thirds of the EU's population, then this would be sufficient to breach the threshold and the Commission may co-ordinate an action.

The Committee also asked to be updated, in due course, on the Government's consideration of the future of cross-border consumer protection cooperation. We are continuing to consider how best to cooperate on consumer protection with our partners after we leave the EU, recognising that there will be mutual benefits for all consumers if we can agree suitable future arrangements. I commit to keeping the Committee updated when this position develops. The Committee will also note that the Government has responded formally to the House of Lords European Union Committee inquiry "Brexit: Will Consumers be Protected?" (9th Report, Session 2017- 19, HL Paper 5 l).

21 February 2018

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING COUNCIL REGULATION (EC) NO 1206/2001 OF 28 MAY 2001 ON COOPERATION BETWEEN THE COURTS OF THE MEMBER STATES IN THE TAKING OF EVIDENCE IN CIVIL OR COMMERCIAL MATTERS (9620/18)

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING REGULATION (EC) NO 1393/2007 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE SERVICE IN THE MEMBER STATES OF JUDICIAL AND EXTRAJUDICIAL DOCUMENTS IN CIVIL OR COMMERCIAL MATTERS (SERVICE OF DOCUMENTS) (9622/18)

Letter from the Chairman to the Rt Hon David Gauke MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice

Thank you for your Explanatory Memoranda dated 19 June 2018. They were both considered by the EU Justice Sub-Committee at its meeting of 24 July.

We decided to retain both proposed Regulations under scrutiny.

Since the result of the referendum in 2016, we have taken a keen interest in the operation of the EU's area of civil justice cooperation and the so-called Brussels suite of Regulations. In our 2017 report, Brexit: justice for families, individuals and businesses (17th Report of Session 2016-17, 20 March 2017, HL Paper 134) we concluded that the EU's system plays a "significant role in the daily lives of UK and EU citizens" by providing "certainty, predictability and clarity" about where legal disputes should be pursued, whilst providing for the automatic recognition and enforcement of judicial decisions, orders and judgments throughout the EU.

These two proposed EU Regulations governing the cross-border service of documents and requests for evidence deal with technical, but important, aspects of the EU's civil justice system. We note that before bringing them forward, the Commission undertook significant evaluations of their operation, including discussions within the European Judicial Network, which identified their current limits especially with regard to modern means of communication and developments in information technology. We welcome efforts to update these Regulations but also note your concerns with the texts, in particular:

- the implications of the provisions in the proposal reforming the rules on the taking of evidence (Doc 9620/18) under which (i) "witnesses can be compelled to give evidence"; and, (ii) the assumption that the requested State is presumed to have accepted an evidence request if it has not responded within 30 days; and,

- the funding ramifications of the proposal dealing with service of documents (Doc 9622/18) for Member States and the potential "burdens" on the agencies receiving requests.

We also note your warning that the proposal dealing with the service of documents might require legislative change in Scotland because, unlike England and Wales, the system there does not operate on

the basis of transmitting/receiving agencies. Should you decide to opt in, we take this opportunity to lend our support to your attempts to address these concerns during the negotiations.

In our view, the UK should opt in to the negotiation of these two Regulations. In reaching this decision we were guided by the Government's desire, articulated in its White Paper on the "Future relationship between the UK and the EU" (Cmnd 9593), that it wishes to negotiate a "new bilateral agreement" with the EU27 "which would cover a coherent package of rules on jurisdiction, choice of jurisdiction, applicable law, and recognition and enforcement of judgments in civil, commercial, insolvency and family matters". Such an agreement would "reflect the long history of cooperation in this field based on mutual trust in each other's legal systems". We also took into account the view of Lucy Fraser MP, Parliamentary Under-Secretary of State at the Ministry of Justice, at an evidence session on 17 July 2018, that: "We have put forward our position and are now negotiating it with the EU … We have been very clear about our desire for a framework that is as close as possible to the one we have at the moment" (Q 22).

We look forward to considering updates from you on the progress of these negotiations in due course.

24 July 2018

JOINT MINISTRY OF JUSTICE AND HOME OFFICE ANNUAL REPORTS TO PARLIAMENT ON THE APPLICATION OF THE JUSTICE AND HOME AFFAIRS OPT-IN

Letter from the Rt Hon David Gauke MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice and the Rt Hon Amber Rudd MP, Home Secretary, Home Office

We are writing to draw to your attention the Eighth Annual Report on the application of the Justice and Home Affairs Opt-in, which were laid before Parliament today.

This Report covers decisions taken over the period 1 December 2016 – 30 November 2017. In that period, decisions on UK participation in a total of 19 EU JHA legislative proposals have been taken. The UK has decided to opt in under the JHA opt-in Protocol in 12 cases and has decided not to opt in in five cases. The Government has asserted the Schengen opt-out to two proposals during that period – in both cases the government decided not to opt out (i.e. the UK should participate in the measures).

These opt-in decisions are without prejudice to discussions on the UK's future relationship with the EU. The UK's relationship with the EU will change as a result of leaving the EU, however, the UK retains the rights and obligations of membership of the EU whilst we remain a member.

We will arrange for a copy of this letter to be placed in the House library.

28 February 2018

COURT OF AUDITORS SPECIAL REPORT 27/2016 GOVERNANCE AT THE EUROPEAN COMMISSION BEST PRACTICE (UNNUMBERED)

Letter from Lord Callanan, Minister of State for Exiting the European Union, Department for Exiting the European Union

Following your letter of 12 September 2017 to my predecessor, I am writing to update you on the Commission's progress in implementing the conclusions of the European Court of Auditors (ECA) Special Report on Governance at the European Commission. I understand that the Committee retains the report under scrutiny.

In accordance with the position set out in our Explanatory Memorandum of December 2016, the Government broadly supports the ECA report's recommendations and called upon the Commission to take action to adopt the recommendations and address the report's findings.

The recommendation of complying with best practice or explaining its reasons for not doing so passed its target implementation date in April 2017. The Commission have stated that they strive to comply with evolving and relevant best practice set out in standards or put in place by international or public bodies and will continually adapt their governance structure. In October 2017, the Commission issued

a Communication on Governance in the European Commission to clarify its governance arrangements and systems in place to ensure transparency, accountability and performance management in day to day activities.

The other recommendations have a target implementation date of April 2018. With regard to issuing a suite of reports in a way which mitigates additional risks as regards availability and quality of information, the Commission took steps in this direction through the publication in July 2016 of the Integrated Financial Reporting Package. They stated that a single accountability report would not be adequate as it is not in line with the Conceptual Framework for General Purpose Financial Reporting (GPFR) which clearly states that GPFRs, which have as objective to provide information useful for accountability and decision making purposes, 'are likely to comprise multiple reports, each responding more directly to certain aspects of the objectives of financial reporting'.

Another recommendation was to align the internal control framework with the Committee of Sponsoring Organisations of the Treadway Commission (COSO) 2013 principles. In March 2017, the Commission published the Revision of the Internal Control Framework which consists of five internal control components and 17 principles based on the COSO 2013 Internal Control-Integrated Framework.

In April 2017 the Commission published an update of the charter of the Audit Progress Committee after considering the reports recommendation of increasing the number of external members of the committee. In line with this recommendation it was decided that an increase from two to three external members, without increasing the total number of members of the committee, would be appropriate.

In terms of bringing forward the publication of its annual accounts, the deadline is set by the Financial Regulation applicable to the general Budget of the Union. The Commission have made a number of proposals in the context of the revision of the Financial Regulation that aim to address some of the concerns highlighted in the report. This is a live negotiation which is still under debate and I will update Parliament if the negotiation is finalised whilst we are still a member.

Finally, in my predecessor's letter of June 2017, it was said that we would update the Committee on any future developments in terms of the Court of Auditors considering the governance of the Commission again. The Court of Auditors will produce a follow up report to assess whether the Commission has taken the necessary actions to adequately manage and follow-up on the recommendations. However, since some of the recommendations implementation date is not until April 2018, there are still no updates from the Court of Auditors in this respect.

9 January 2018

Letter from the Chairman to Lord Callanan, Minister of State for Exiting the European Union

Thank you for your letter dated 9 January 2018 which was considered by the EU Justice Sub-Committee at its meeting of 23 January.

We decided to retain the report under scrutiny.

We are grateful for your update and note its detailed contents outlining the Commission's efforts to comply with the European Court of Auditors' (ECA) recommendations for reform. We look forward to considering, in due course, a further update, post-April 2018, once the deadline for the Commission's compliance with the ECA's report has passed.

23 January 2018

PROPOSAL FOR A COUNCIL DECISION ADOPTING THE PROVISIONS AMENDING THE ACT CONCERNING THE ELECTION OF THE MEMBERS OF THE EUROPEAN PARLIAMENT BY DIRECT UNIVERSAL SUFFRAGE (UNNUMBERED)

Letter from the Chairman to Chloe Smith MP, Minister for the Constitution

Thank you for your letters dated 6 and 20 April 2018. They were both considered by the EU Justice Sub-Committee at its meeting of 1 May.

We decided to waive the scrutiny reserve ahead of the Council's imminent agreement of this matter.

Delays

It has been 22 months since the Government last wrote to update us on the progress of this matter through the Council. Our letter to you dated 5 July 2016, acknowledged that the result of the 2016 referendum on the UK's membership of the EU cast a shadow of doubt over our scrutiny of this matter. Despite your suggestion in your letter dated 6 April 2018 that there was insufficient certainty to provide us with an update on this proposal's discussion in the Council, the delay in communicating with us is entirely unjustified and disappointing. Does this mean that in those 22 months nothing of significance occurred in the Council (or, perhaps, more importantly in relation to the Council's discussion of this proposal with the European Parliament in order to ensure its consent) which merited a letter to this Committee?

This oversight is exacerbated by the fact that you only provided us with an update (and an implied request for clearance) in the week preceding the Council's agreement of this matter. In his letter dated 30 April 2018 to Lord Boswell, Chair of the European Union Committee, the Secretary of State for Exiting the European Union said, in addressing repeated scrutiny failures by the Government, that he had written to his ministerial counterparts "stressing the importance of providing the Committee with the most comprehensive and up-to-date information possible". He promised that the Government will "continue to support a strong scrutiny process and facilitate this for as long as EU legislation will continue to affect the UK". We trust that the Secretary of State's undertakings will be followed and look forward to a genuine improvement from Government departments.

EU citizens in the UK

Turning to the substance of this proposal, you repeatedly suggest throughout both letters that due to Brexit this proposal "will not have any practical impact on the UK". We do not agree. There are currently about 3.7 million EU citizens in the UK who, according to the draft Withdrawal Agreement (Article 122(1)(b)), will lose their rights to vote and stand in European Parliamentary elections in March 2019, just two months before the next EP elections in May 2019.

We find your view worryingly complacent, in the light of the "areas for potential agreement" highlighted in your letter dated 6 April. (In particular, the provision allowing the Member States to take the necessary measures to allow their citizens residing in third countries to vote in European Parliamentary elections; and, the requirement that the Member States take necessary measures to ensure that double voting in European Parliamentary elections is subject to "effective, proportionate and dissuasive penalties".)

In March 2019 the UK will be home to a considerable population of third country resident disenfranchised EU citizens who came to the UK in good faith. Does the Government retain any responsibility to facilitate the exercise of the democratic rights enjoyed by this considerable body of EU citizens after we leave the EU? And, what discussions and/or undertakings has the Government given to the Council to that end?

Regional Assemblies and the representation of women

There are two further matters that we have pursued with you that your update does not address: (i) the requirement that on election to the European Parliament, MEPs become excluded from membership of regional assemblies; and, (ii) the underrepresentation of women in the European Parliament and the Government's opposition to the use of legal quotas as a solution. We ask you to address this oversight promptly, once the Council has agreed this proposal.

3 May 2018

Letter from Chloe Smith MP, Minister for the Constitution

Thank you for your letter of 3 May about the proposals for the reform of the electoral law of the EU concerning European Parliamentary elections. I note that the Committee has decided to waive the scrutiny reserve on this matter.

I note your concerns about ensuring the Committee is updated on the position with the proposals. The European Parliament's original proposals were wide ranging and covered various issues concerning

European Parliamentary elections. Many of the proposals created difficulties for Member States and since their publication in November 2015 it has not been clear whether Member States would be able to agree a package of proposed changes, and if so, what particular changes would command support. There have been ongoing consideration of this matter by Member States at Working Group level and in Coreper though without agreement on the way forward. It was only recently that a package of measures emerged which might be agreeable to Member States. I apologise that the Committee was not kept informed of the position during this period but there was not any definite information that we could forward to the Committee.

In late March 2018, the Presidency put forward a revised package of measures in a limite document which identified areas for potential agreement. These revised proposals draw upon the original proposals from the European Parliament, though differ markedly from them in many respects, and it is this set of proposals that is now being considered by Member States. I wrote to the Scrutiny Committees on 6 and 20 April to update them on the Presidency's revised package of proposals and the expected timings of the consideration and possible adoption of them by Member States. In my letter of 20 April, I sought from the Scrutiny Committees a waiver or clearance from the existing scrutiny reserve to avoid a possible override on the proposals.

I explained in my letter of 20 April that we had not anticipated that the Presidency's set of proposals would be considered as early as at the General Affairs Council meeting on 17 April and in the event, as I have indicated, it was not possible for Member States to reach agreement at that meeting. Following the meeting, the Presidency had hoped to adopt the proposed Council Decision quickly by written procedure before the end of April though there is not yet agreement on this matter among Member States. The Government's position is that if other Member States are able to agree the package of measures, we do not wish to prevent the proposals from proceeding. I will keep you informed of the position in this matter.

You comment on the position of EU citizens in the UK. EU citizens resident in the UK after Brexit will still be able to vote in elections to the European Parliament in their home country, if that country provides for overseas voting. It will be for the Member States concerned to communicate with their citizens in the UK as they see fit and provide them with opportunities to cast a ballot according to their own laws and practices. Similarly, were an EU citizen resident in the UK to cast a ballot in a poll being held in their home country both from the UK and also from their home country, it would be a matter for the authorities of that home country.

Once we have left the EU the Government will have no legal responsibility to facilitate the exercise of EU citizens' democratic rights in relation to elections to institutions of which the UK is not a member. The UK Government does not provide assistance to foreign nationals living here to vote in elections overseas. Nor do we hinder those foreign nationals from participating in such polls in any way.

In my letter of 6 April, I set out an assessment of the proposed measures and their likely impact on the UK. I can reassure you that the Government take these issues seriously though my comments were informed by the fact that we will not be taking part in future European Parliamentary elections and that we recognise that they will therefore not have any practical impact on the UK. You have drawn attention to two further matters: (i) the proposal to exclude MEPs from sitting on regional assemblies; and (ii) the underrepresentation of women in the European Parliament and the proposed use of legal quotas to address the position. The European Parliament's original set of proposals included measures on these issues. Member States were not able to reach agreement on these particular proposals and they are not included in the Presidency's current revised proposals, and the measures are not at present under consideration by Member States.

Of course, once the UK leaves the EU in March 2019, the UK will no longer elect MEPs, and the workings of the European Parliament and the rules governing its membership will not be a matter for the UK. With regard to the first issue concerning regional assemblies, I would note that under the devolution settlements elections to the Scottish Parliament and the Welsh Assembly, including membership of these bodies, are devolved matters, and the relevant Devolved Administrations are therefore responsible for setting the rules governing membership of these bodies.

With regard to the underrepresentation of women in the European Parliament, the Government continues to believe that overall targets are not the solution. Setting legal quotas is not a straightforward matter and we would need to be alert to unintended consequences. As John Penrose MP, the then Parliamentary Secretary, Cabinet Office previously explained in earlier correspondence

with you, we have enabled UK political parties to legally use women-only shortlists, and take other more general forms of positive action, should they wish, to increase participation by underrepresented groups. 41% of the total number of UK MEPs are women which compares favourably to the average across the EU, and our view is that focus should be on the political parties themselves taking appropriate action to increase participation by women and other underrepresented groups.

I would comment that with regards to the UK Parliament, we now have the most gender diverse Parliament in British history. Not only do we have our second female Prime Minister, but women make up an unprecedented 32% of the House and a third attending Cabinet. We do not believe that further legislation and regulation is the best way forward. Political parties are responsible for their candidate selection and should lead the way in improving the representation of women. The Government agrees that it should support political parties in this aim. We would encourage any woman who has considered a role as an MP, or who has wanted to make changes to better our society, to stand – we need their energy, leadership and commitment to create a democracy that works for everyone.

We have allocated £5 million to mark the centenary of voting rights for women in 2018. This fund supports projects that raise awareness of this crucial milestone, and inspire people to build a diverse political system that reflects the nation it serves.

14 May 2018

Letter from the Chairman to Chloe Smith MP, Minister for the Constitution

Thank you for your letter dated 14 May 2018. It was considered by the EU Justice Sub-Committee at its meeting of 12 June.

We decided to clear the proposal from scrutiny.

We welcome your apology for not keeping us informed of this proposal's slow progress through the Council. We also note the contents of your latest update, in particular, your confirmation that the Council has removed from the proposal's contents: (i) the requirement that on election to the European Parliament, MEPs become excluded from membership of regional assemblies; and, (ii) the provisions that sought to address the underrepresentation of women in the European Parliament.

We remain concerned however by the Government's attitude towards the 3.7 million EU citizens lawfully resident here. Your view that the "Government will have no legal responsibility to facilitate the exercise of EU citizens' democratic rights in relation to elections to institutions of which the UK is not a member" is disappointing. We note that you have failed to address our specific request for details of any discussions and/or undertakings given to the Council on the UK's responsibilities to facilitate the ability of the 3.7 million EU citizens to exercise their democratic rights post-Brexit.

Your suggestion that the UK "does not provide assistance to foreign nationals living here to vote in elections overseas. Nor do we hinder those foreign nationals from participating in such polls in any way" illustrates a worrying policy towards the rights of EU citizens remaining in this country post-Brexit. It also ignores the fact that when these EU citizens decided to make their homes in this country they did so at a time when the UK was obliged to respect the rights inherent in their EU citizenship and to protect their democratic rights.

Whilst the result of the EU referendum might have ended the UK's legal responsibilities in this regard, it does not bring to an end the UK's moral obligations towards these individuals.

We look forward to considering, in due course, your summary of the Council's text once it has been agreed.

12 June 2018

Letter from Chloe Smith MP, Minister for the Constitution

Thank you for your letter of 12 June about the proposals for the reform of the electoral law of the EU concerning European Parliamentary elections. The Committee previously decided to waive the scrutiny reserve on this matter and I note that the Committee has now decided to clear the proposal from scrutiny. I am sorry for the delay in responding to your letter though I wished to update you on recent developments concerning the proposed Council Decision.

I have noted the points you raise about EU citizens resident in the UK. With reference to your specific query, I can confirm that I am not aware that this issue has specifically been raised in the discussions with Council/Member States on the proposal for the reform of EU electoral law. I would note that the proposed measures are intended to facilitate participation in European Parliamentary elections. The text of the Council Decision encourages Member States "to take the measures necessary to allow those of their citizens residing in third countries to vote in elections to the European Parliament".

We will continue to recognise the value that EU citizens bring to our society, and we have already reached broad agreement with the EU on wider citizens' rights. We will remain an open and diverse country after we leave the European Union.

Once we have left the EU, we will no longer have any connection to the EU institutions and it would be unusual for the UK Government to maintain any responsibility for the conduct of any processes in relation to those institutions. More widely, it is uncommon across democratic nations for host countries to assist resident non-nationals in voting in elections to institutions in other countries. At present, EU citizens living in the UK can choose to vote at European Parliamentary elections for a UK candidate or a candidate from their home nation. EU citizens will still be able to vote for candidates from their home nations once we have left the EU.

I can advise that Member States have now reached agreement on a set of measures that make changes to the electoral law governing European Parliamentary elections. I attach the document produced by the Council (ref 9425/18) that sets out the text of the proposed Council Decision. The final package of proposals is broadly the same as the set of proposals put forward by the Presidency at the General Affairs Council meeting on 17 April, with a small number of differences. Member States were unable agree to the proposal concerning the provision of information to voters about parties and candidates standing at European Parliamentary elections and this has been dropped from the final package of measures. Also, two technical changes have been made to the proposals concerning the exchange of information on EU citizens. These technical changes do not have any substantive effect. Further details of the final proposals are set out in the annex[6] to this letter.

As I have explained in my earlier letters to you, the UK has abstained on these proposals as they will come into force for European Parliamentary elections that the UK will not be taking part in because we will no longer be an EU Member State. I have confirmed in a PQ answer of 18 May to Mr Virendra Sharma MP that the Government does not consider it is necessary for Returning Officers and electoral administrators to make the usual preparations for the conduct of a European Parliamentary poll in 2019 and we will not bring forward an Order to set the date of the poll for the European Parliamentary elections. The proposals will therefore in practice have no practical impact on the UK though we do not wish to prevent the proposals from proceeding if other Member States and the European Parliament are able to agree them.

Council submitted the proposed Council Decision to the European Parliament for its consideration as the European Parliament's consent is required for the Council Decision to proceed. The European Parliament voted on and approved the proposed Decision in its plenary session on 4 July. Following this, the Council Decision has come back to Council and Member States have agreed the formal adoption of the Council Decision.

Member States now need to approve the Decision in accordance with their constitutional requirements to enable the Decision to enter into force. For the UK, the provisions at section 7(2)(b) of the European Union Act 2011 specify that an Act of Parliament would be required before the UK could confirm its approval of a Council Decision made under Article 223(1) of TFEU (and the proposed Council Decision is being made under this provision). Schedule 9 to the European Union (Withdrawal) Act 2018 repeals the European Union Act 2011. The European Union (Withdrawal) Act 2018 (Commencement and Transitional Provisions) Regulations 2018 (SI 2018/808 (C.63)) that were made on 3 July brought into force (on 4 July) the repeal of specified provisions in the 2011 Act, including those at section 7(2)(b). As a result, approval by the UK will no longer require an Act of Parliament.

I will keep you informed of developments with the Council Decision.

16 July 2018

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[6] Not published here,